United States Court of Appeals

for the Second Circuit



TRANSCRIPT

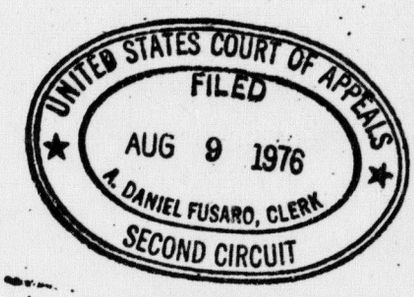
76-6087

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76-6087

JESSE B. STEPHENS, Plaintiff, vs. UNITED STATES OF AMERICA UNITED STATES POSTAL SERVICE, et al, Defendants.	Before: HON. THOMAS P. GRIESA, District Judge. 73 Civ. 1559

New York, January 6,7, 1976



STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

JESSE B. STEPHENS :

Plaintiff : 73 Civ. 1559

vs. :

UNITED STATES OF AMERICA, :
UNITED STATES POSTAL SERVICE, et al., :

Defendants. :

- x

January 6, 1976,
10 A.M.

Before: Hon. Thomas P. Griesa, D.J.

Appearances:

MICHAEL D. HAMPDEN, ESQ.,
Legal Aid Society, Bronx, New York
By: Ian F. Feldman, Esq., and
M. Madeline Welch, Esq., of Counsel.

THOMAS J. CAHILL,
United States Attorney for the
Southern District of New York,
By: Samuel J. Wilson, Esq., and
Charles F. Richter, Esq.,
Assistant U.S. Attorneys.

THE COURT: Is everybody ready for trial?

MR. FELDMAN: Yes, your Honor.

MR. WILSON: The defendant is ready, your Honor.

THE COURT: All right. Who goes first?

MR. WILSON: I believe the defendants go first.

THE COURT: I think so, yes.

Let us get on the record a statement of the issues for trial, if we could, because I think they are now limited somewhat and I would like to have a clear understanding of those limitations.

What is the government's understanding of the issues?

MR. WILSON: Well, Judge, I had a brief opening statement which I think goes about two minutes and asserts that.

THE COURT: Go ahead.

MR. WILSON: May it please the Court, my name is Samuel Wilson and I am an Assistant United States Attorney in the office of Thomas J. Cahill, United States Attorney for this district. I represent the defendants herein, and I will be assisted today by my co-counsel Charles Richter, sitting at counsel table, who is also an Assistant United States Attorney.

Mr. Stephens, the plaintiff in this action, and

a former employee of the United States Postal Service, brought this action challenging the constitutionality of the procedures by which the Postal Service collected by setoff against Mr. Stephens' pension account certain losses which it attributed to Mr. Stephens' conduct.

Mr. Stephens, in his complaint, paragraph 36-- I believe that is the amended complaint -- denied responsibility for these losses.

The defendant Postal Service, in its answer to the amended complaint, asserted that the losses it charged to Mr. Stephens by way of counterclaim were due to his actions. That is paragraphs 20 through 23 of the defendants' answer to the amended complaint.

This morning the defendant Postal Service proposes to go forward and establish that Mr. Stephens was responsible for the losses which are attributed to him in the counterclaim because of the nature of the activities involved, basically embezzlement of mail, and because of the dates of the acts in question, January, 1966, through March of 1969.

Proof of the counterclaim will be somewhat limited. The Postal Service will, however, establish by evidence found sufficient by the Second Circuit in Boerner v. The United States, reported at 117 Fed. 2d, page 387, and more

recently by the Fourth Circuit in Elmore v. The United States, reported at 465 Fed. 2d, page 1232, that Mr. Stephens was responsible for the losses charged to him and asserted in the counterclaim.

Once the government, we believe, or the defendants have carried their burden in this regard, we believe that the burden will shift to Mr. Stephens to establish that he was not responsible for these losses.

The government is prepared to go forward.

THE COURT: So what we have in the framework of the trial before me today is this, that the government is holding back certain compensation which would otherwise be due to the plaintiff, right?

MR. WILSON: That's correct, your Honor.

THE COURT: And it is holding that compensation back because it claims that the plaintiff is indebted to the government because of property stolen from the mails, right?

MR. WILSON: That's correct, your Honor.

THE COURT: And it will undertake to establish that indebtedness, right?

MR. WILSON: Yes, your Honor.

THE COURT: And this is the issue for trial, right?

MR. WILSON: Yes.

THE COURT: Does the plaintiff agree just stated in general terms, those are the issues, right?

MR. FELDMAN: Yes, your Honor.

THE COURT: All right, go ahead.

MR. WILSON: At this point the defendants would like to call their first witness, Inspector Stewart Jones.

S T E W A R T J O N E S, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Jones, by whom are you currently employed?

A United States Postal Service.

Q And in what capacity are you employed there?

A As a postal inspector.

Q For how long have you held that job title?

A Since 1960.

Q What is your current assignment and, briefly, what are the duties of that assignment?

A My current assighment is branch manager, internal theft investigations on the staff to the regional chief inspector.

In essence, I coordinate internal theft

investigations between the three divisions, which comprise the northeast region, I review internal theft --

MR. FELDMAN: Excuse me, can you speak up a little bit, please?

A I review internal theft trends in the division and make recommendations to the regional chief inspector in areas where I feel we should give concentrated attention.

Q Were you employed by the Postal Service prior to becoming a postal inspector?

A Yes, I was.

Q For how long and in what capacity?

A My service started with the Postal Service in 1945. I was a clerk in a Post Office from that point until my employment as a postal inspector in 1960.

Q During the period of February and March, 1969, what was your job title and what were your assigned duties within that title?

A My title was postal inspector, and I was assigned a depredation assignment on the east side of Manhattan, the name of the Post Office stations between approximately 30th Street up to the river, clear north to the northern tip of the Island of Manhattan.

Q Can you identify for us the major postal facilities which fell within that jurisdiction?

A Yes. The 36th Street facility, the Murray Hill Station, Grand Central Station, Lenox Hill Station, Lincolnto Station, and at a later date FDR Station.

Q Inspector Jones, you have used the term depredation in connection with your responsibilities.

Can you define what you mean by depredations?

A In our terminology, a service depredation relates to internal theft by our own postal employees.

Q What was the total time period during which you were assigned to the north Manhattan area that you have just previously described?

A From approximately January of 1969 until September of 1971.

Q You mentioned the 36th Street facility in your prior response.

Does that facility still exist as a postal facility?

A Not as such.

The operations that were at the 36th Street facility are now at the FDR Station.

Q Was there an inspector who preceded you in the responsibility for the north Manhattan area?

A Yes.

Q Do you know the name of that inspector?

A George Forster.

Q Were there in existence at the time you took over the responsibility in January of 1969 investigations, ongoing investigations at that time?

A Yes.

MR. FELDMAN: Objection.

I don't think the witness has personal knowledge of those ongoing investigations.

THE COURT: This is just background. Overruled. Were there?

THE WITNESS: Yes, there.

THE COURT: Can we get past the background and get down to the -- I assume we have facts specifically relating to this plaintiff. Let's try to get to those as quickly as we can.

Q Do you have any subordinates under you -- strike that.

THE COURT: Really, what is the need for all this organizational business? I assume that he did something, he found something, he has some evidence of something done by the plaintiff and that he personally knows.

Let's get his knowledge.

Did he personally investigate or did he just direct an investigation?

MR. WILSON: I will address those questions to

the witness, your Honor.

THE COURT: All right.

Q Did there come a time, Inspector Jones, where you conducted an investigation concerning losses at the 36th Street facility?

A Yes.

THE COURT: Did you investigate a problem about Jesse B. Stephens?

THE WITNESS: Yes, your Honor.

THE COURT: What did you do on Jesse B. Stephens?

MR. WILSON: Your Honor, if I may interrupt, the point is, it is significant how they came to focus on Jesse B. Stephens.

THE COURT: All right.

MR. WILSON: And that is what I am trying to reach.

THE COURT: Certainly. Okay. I'm sorry. You go ahead.

Q At the time you began your responsibility for the investigation of the 36th Street facility, were you informed of the existence of any suspects prior to your taking over that responsibility?

MR. FELDMAN: Objection.

THE COURT: I will only take it -- being informed

of a suspect does not prove any guilt at all, I understand that, but I think what the government is trying to do is to simply show the course of the investigation.

I will take it to show the course of the investigation, and if I use it for any other reason I will plainly inform you. I will take it for that purpose.

Okay, go ahead.

A Would you repeat the question, please?

MR. WILSON: Could you read back, Mr. Reporter.

(Record read.)

A After I assumed the responsibility, in talking with the special investigators who were assigned to me and who had been assigned to Inspector Forster prior to my assuming the responsibility, I became aware that there had been a problem with registry losses at the 36th Street facility and that Mr. Stephens had on one occasion been interrogated by inspectors and the special investigators relative to a registry loss which did occur at that facility.

THE COURT: What do you mean a registry loss?

THE WITNESS: A registered article containing jewelry, I believe in the vicinity of $40,000 value, was determined to have been lost after it was received at the 36th Street facility.

THE COURT: This was told you?

THE WITNESS: This was told me and I subsequently reviewed the inspector's report outlining this loss.

THE COURT: But this was not anything you personally investigated, is that right?

THE WITNESS: No, sir. No, sir.

Q Did you, after receiving that information which you have just outlined, take steps to advance an investigation of the registry losses at the 36th Street facility?

A Yes.

Q Can you tell us what steps you took?

A On March -- prior to March 15th I instructed two of the aids who were working with me to go into the observation gallery at the 36th Street facility on the morning of March 15th to observe Mr. Stephens and the other persons working in the registry section on that date.

Q Can you explain to us what the observation gallery is?

A The observation gallery is a corridor type construction around the outer wall of a postal facility which can be entered from the inspector's office without being detected by other postal employees.

The observation galleries have either one way glass or a louvre type observation unit from which personnel inside the lookout gallery can observe the activities of the employees

without being detected by the employees.

THE COURT: You instructed-- just go over that again.

Who did you give instructions to?

THE WITNESS: George Moffa and Daniel Parisi.

THE COURT: And you instructed them to go into the observation gallery and observe Stephens and did you say two others?

THE WITNESS: And other employees. I did not know how many would be there.

THE COURT: And working where?

THE WITNESS: In what we refer to as the registry cage or the registry section, an enclosed area where registered mail was processed at the facility.

THE COURT: All right.

Q Mr. Jones, at or about that time in 1969, I believe, when you began your work on this investigation, did you see the registry facility that we are speaking of here?

A Yes, I did.

Q Can you briefly describe it to us?

A The facility was an enclosed area. On one side it was enclosed by a solid wall, an outer wall, three sides were enclosed with a wire mesh fence type material for the express purpose of limiting the number of personnel who would

have access to the registered mail which was processed within that enclosed area.

The area had, to the best of my recollection, two entrances; one the door from our lookout gallery, which we referred to as a break out door, that was locked and could not be opened by any employee at the facility, except the operations manager, who had a key for cleaning purposes only, the other entrance was in the -- the other door was in the wire enclosure to allow personnel working in the facility to enter and exit and for the purposes of taking sacks of mail in and out.

There was also an opening, a half opening which was used by the registered personnel to transfer registers from the registry section to the employees who would be making delivery of those articles, but this was a waist high opening with a ledge where the mail could be laid upon it.

Q Finally, about how large would you say that area was?

A I'm estimating in the vicinity of 15 by 20 feet, 15 by 30 feet, in that range.

Q Did you say that you assigned Mr. Moffa and Mr. Parisi to observe from the lookout gallery on March 15th? Is that date correct?

A Yes, yes.

Q And what year is that?

A 1969.

Q Do you know if Mr. Moffa and Mr. Parisi conducted that observation?

A Yes, they did.

Q Did they report back to you the results of their observation?

A Yes, they did.

Q Based on their report, did you take any further action in the investigation of the registry section at the 36th Street facility?

A Yes.

Q Can you tell us what action you took?

A Following the report from Mr. Moffa and Mr. Parisi, I went to a jewelry firm on I believe it was West 47th Street -- I won't -- I'm not sure on the exact address-- and obtained -- purchased two zircon stones and also obtained from the jeweler some address labels which he normally used in mailing parcels.

Using those items, I prepared or instructed the special investigators who were working for me to prepare what we refer to as a test parcel.

MR. FELDMAN: Excuse me, your Honor. I believe it is a stipulated fact in this case that these two zircon

stones were the subject of the arrest of Mr. Stephens. That is in the agreed stipulations of facts, for which he was convicted and for which he served time in prison.

Perhaps in the efforts of judicial economy, I don't think all this testimony will be necessary.

MR. WILSON: If I may address that, your Honor.

THE COURT: Okay.

MR. WILSON: We are not attempting to gain proof that Mr. Stephens stole the stones for the purpose of again convicting him or again suggesting that he is a bad individual.

We believe that the procedure by which the subsequent testimony concerning this package will suggest the procedure used by Mr. Stephens in the other losses were attributing to him.

THE COURT: Okay, I will allow the testimony.

Go ahead.

A We prepared a test parcel which was subsequently used on March 22nd by myself and the special investigators at the 36th Street facility, and as a result we observed Mr. Stephens handling --

THE COURT: Who is "we"?

THE WITNESS: Myself and special investigators--

THE COURT: You just stick to what you know.

In other words, did you make an observation?

THE WITNESS: Yes, I did.

THE COURT: Did you stand in the gallery?

THE WITNESS: Yes, I did.

THE COURT: Okay. What did you see?

THE WITNESS: I gave the test parcel to an employee who was assigned to work in the registry section, Mr. Beck, and instructed him to place this parcel among the other registered parcels in the facility for distribution, in the registry section for distribution.

I went into the gallery and I observed Mr. Beck place this parcel.

I subsequently saw another employee in the registry section take it and put it on what I refer to as a dispatch desk.

Mr. Stephens handled this parcel on several occasions between approximately 7 A.M. and 10 A.M. He checked the registry number on that parcel against registry manifolds to see apparently if he could find that that piece had been listed at any point. In fact, he wrote the number from the registered parcel on a small piece of a torn envelope, took this over to where all the registry dispatched bills were located and he was observed going through all the bills and apparently referring back to this number he had written down to see if the registered piece were listed.

At approximately 10 o'clock, he put the parcel in a mail pouch which was hanging on the end of the desk.

THE COURT: At about what time?

THE WITNESS: Approximately 10 A.M.

THE COURT: He did what?

THE WITNESS: Put the test parcel into the pouch.

THE COURT: Then what happened?

THE WITNESS: He then put his hands and arms down into the pouch and while I could not see what his hands were actually doing I could see movement of his arms and shoulders.

When he removed his hands from the pouch, both fists were clenched. One hand was put into his pants pocket and he opened a drawer on the desk and put something from his other hand inside the desk drawer. He closed the drawer and left the registry section.

At this point I managed to get word to Mr. Beck and asked him to look in the pouch. I observed him look into the pouch and immediately leave the registry section.

Mr. Zambarda, who was in the gallery with me, went into our office. He returned a few minutes later and told me that Mr. Beck reported the test parcel was in the pouch in an opened condition.

THE COURT: Did you look in the parcel yourself?

I mean, did you look in the pouch?

THE WITNESS: No, sir, not at that point.

THE COURT: All right. What happened then?

THE WITNESS: Shortly after Mr. Zambarda returned to the lookout gallery, Mr. Stephens came back into the registry cage, went back to the pouch and put his hands again down inside the pouch.

At this point, knowing that the parcel had been opened, Mr. Zambarda and I left the registry cage through the break out door I previously referred to, and as we were approaching Mr. Stephens it was noted he had picked up another pouch from the floor and he had this in his hand when I walked up to him, I identified myself and advised him he was under arrest.

At this point I took the pouch which he had in his hand from him and opened it and found the mutilated wrapper from the test parcel which I had had Mr. Beck previously place in the registry section.

I also opened the door to the dispatch -- the drawer on the dispatch desk --

THE COURT: And this pouch was in Mr. Stephens' hands?

THE WITNESS: Yes, your Honor.

THE COURT: Then what did you do?

THE WITNESS: We opened -- I opened the drawer to the dispatch desk and recovered from it some of the cotton batting which had been used as cushioning material around the zircon stones plus I would refer to it as a razor-type knife.

THE COURT: All right. Go ahead.

THE WITNESS: The parcel which was in the pouch recovered from Mr. Stephens was in many pieces. I would say eight to ten pieces. It appeared to have been cut by means of a sharp instrument, which I assumed was the razor which we picked up from the desk.

Mr. Stephens was taken to our office and a search of his person resulted in the recovery of two small brown envelopes each containing one of the zircon stones. These items were in the right rear trouser pocket of a pair of walking or Bermuda shorts which he was wearing beneath his regular work pants.

Q What did you do thereafter?

A Following the -- I don't quite understand your question, sir.

Q Did you then arrest Mr. Stephens?

A I had previously arrested him on the work floor.

Q Did you interrogate Mr. Stephens?

A I attempted to interrogate him.

He refused to give me any information, including

his home address or anything else.

Q I would like to go back over a few details concerning this.

These events that you have just recounted occurred on what date?

A March 22, 1969.

Q You referred to the term registry manifold.

Can you explain to us what that means?

A Registry manifold is a pre-printed Post Office form which is used by the Post Office to identify registered parcels or mail being dispatched between two points in the postal service.

The form shows the point of origin or who is preparing the dispatch, the destination point, the name of the dispatching employee and at the office of receipting the receiving employee also signs this form.

If the mail is dispatched in a rotary locked pouch, it will bear at the top the rotary lock number, as well as the ascending number on this lock, which is a continual ascending number. Every time the lock is opened the number ascends one additional digit.This lock's purpose is to insure the employee receiving the pouch that it has not been opened between the time it was dispatched and the time it was received by him. It is also used by postal inspectors in any

investigation to determine if a pouch or a piece of mail that is lost may have been taken between dispatch points and by reviewing these records we can establish if the lock number, the ascending lock number was the same when received as indicated when dispatched.

Q At the time of this investigation in March of 1969, was every registered article contained within a pouch listed on the registry manifold that related to that pouch?

A Not by the individual registered number, no.

At that time our procedures required that if a piece had a declared value of $400 or more, the accepting employee is supposed to put an X following the registry number on the piece itself. This was known by postal employees to indicate that this piece had a value of $400 or greater, and the instructions were that postal employees record these pieces by the individual registered number on the manifold.

The balance of the registers being dispatched between two facilities were simply counted and a notation made on the manifold that 37 bulk or 42, whatever the total number might be. Then the total number of pieces in the dispatch included both the bulk items and the listed registers.

Q The manifold would reflect the total of both?

A Yes.

Q In your narrative you used the term or you said,

I believe, that you left the registry cage through the break out door, is that correct?

A We entered the registry cage through the break out door from the --

Q You entered where?

A Through this break out door.

Q From where were you entering?

A From the lookout gallery directly into the registry cage.

THE COURT: Was the test package listed on the manifold?

THE WITNESS: No, it was not.

THE COURT: Was this of a value which would require registry on the manifold?

THE WITNESS: We had placed an X.

THE COURT: You had an X. Okay.

THE WITNESS: Which under normal condition would have required listing, yes, sir.

THE COURT: Under normal conditions, when would it get listed? Would it get listed in this registry section?

THE WITNESS: Under normal conditions, the test parcel, your Honor, showed a return.

Supposedly we had mailed it to a firm in California and it was being returned to the sender, Mr. Oliver.

It would normally come back through the General Post Office on Eighth Avenue and 33rd Street. They would bill this to the 36th Street facility on a manifold listing it by the registered number, so when it arrived --if it had gone into the 36th Street facility in a normal mail pouch in lieu of being put in there by Mr. Beck at my request, it should have been listed.

However, we found, and we have since changed the procedure, because we found that many employees failed to either put the X on a piece that was declared valued over $400, or if the X was on there they still failed to note this and failed to list the piece on a manifold. So as a consequence, many registered pieces which had an X on them would be shown as one of the bulk items on the manifold, it would not --

THE COURT: If someone was in the registry section -- wait a minute. I don't know exactly how to ask this.

You are saying if this had been a normal package traveling in normal course and the right things had been done, it would have been listed in a manifold which would have been in the registry cage, right?

A Yes, sir.

Q Because it would have come from another Post Office, would have had an X on it, and it did have an X on it?

THE WITNESS: It did have an X on it, yes.

THE COURT: Okay.

Are you telling me at that time it sometimes happened that even a package with an X on it would not get listed on the manifold because of the carelessness or what have you of employees?

THE WITNESS: Yes, sir.

Q On that point, when you say not listed, how do you mean -- strike that.

Would such an article, that is, an X'd article which should be listed by number and was not, be listed in some other way on the manifold?

A It probably would be listed as one of the bulk items. We found this -- I personally found this in some investigations I conducted. Not in reference to this case, but other investigations.

Q Inspector Jones, I show you what has previously been marked as Defendants' Exhibit 18 for identification, which I will refer to as a glassine envelope containing a number of pieces of cardboard, and ask you if you can identify the contents of that envelope (handing).

A Yes. These are the mutilated pieces of the test parcel which was in the pouch taken from Mr. Stephens at the time of his arrest.

Q Is this the parcel that you prepared, the test parcel?

THE COURT: He has already said that. Really, we are getting repetition.

Are you offering that?

MR. WILSON: I am, your Honor.

THE COURT: Any objection?

MR. FELDMAN: No, except, your Honor, I should point out that this test parcel is not one of the counterclaim losses by the Post Office.

THE COURT: I understand that and I understand what the government is trying to prove is the procedure observed in this instance as circumstantial evidence of other instances.

I will receive it.

MR. FELDMAN: I have no objection.

THE COURT: All right.

(Defendants' Exhibit No. 18 was received in evidence.)

xx

Q Inspector Jones, I show you what have been previously marked as Defendants' Exhibits 19 and 20 for identification, which are both glassine envelopes, one containing two stones of some sort and the other containing two brown envelopes, and ask you if you can identify 19 and 20 for

identification (handing).

A 19 is two zircons that were used in the test parcel, 20 are the two brown envelopes that were also in the test parcel with one zircon in each envelope.

These are the envelopes and the stones recovered from Mr. Stephens' rear pocket at the time of arrest or following the arrest.

Q Both the envelopes, Exhibit 20, and the stones, Exhibit 19, were found in Mr. Stephens' pocket?

A Yes.

THE COURT: He has already said that. Really, we don't need to have this repetition.

Are you offering 19 and 20.

MR. WILSON: I offer in evidence 19 and 20.

THE COURT: Any objection?

MR. FELDMAN: No objection.

THE COURT: All right, received.

(Defendants' Exhibit 19 and 20 received in evidence.)

xx

Q Inspector Jones, I show you what has previously been marked Exhibit 22 for identification, which is a brown envelope and a slip of paper stapled thereto, and ask you if you can identify that exhibit (handing).

A The small piece of paper was recovered by me

from the registry cage at the time of the apprehension.

THE COURT: Is that from the drawer?

THE WITNESS: No, sir.

THE COURT: You go ahead. I'm sorry.

THE WITNESS: I don't recall exactly where--just a moment, I can tell you.

I don't recall exactly where it was recovered, but it was recovered in the registry cage at the time Mr. Stephens was apprehended, and this small piece of brown paper is the one I previously referred to on which Mr. Stephens had recorded the registry number from the parcel. He referred to this when he was checking the manifolds to see if the article had been listed thereon.

Q Was that number written by Mr. Stephens?

A Yes. I observed him writing this number on the paper.

Q Have you compared and is that number the same as the test parcel registry number?

A It is, with the exception the X is not shown after the registered number.

MR. WILSON: The defendants offer in evidence Exhibit 22 for identification.

MR. FELDMAN: No objection.

THE COURT: All right. Received.

(Defendants' Exhibit 22 received in evidence.)

Q Inspector Jones, I show you what has previously been marked as Defendants' Exhibit 21 for identification, which is an envelope containing a knife of some sort (handing).

Can you identify that for us, the contents of that envelope?

A This is the razor knife I previously referred to which was recovered from the desk drawer at the time of Mr. Stephens' apprehension.

MR. WILSON: The defendant offers in evidence Exhibit 21 for identification.

MR. FELDMAN: No objection.

THE COURT: Received.

(Defendants' Exhibit 21 received in evidence.)

Q Inspector Jones, is the knife, which is Exhibit 21 in evidence, issued by the Postal Service to its employees?

A No, sir, not to my knowledge it is not.

Q Inspector Jones, are you familiar with the correct procedures for the handling of registered mail?

A To a degree. Some changes have been made in the past few years since I was actively involved in that area that I am not aware of I'm sure.

Q Let us address ourselves to the time of this investigation in 1969.

Were you at that time familiar with the general procedures applicable to the handling of registered mail by postal employees?

A Yes.

Q If you would, can you describe to us how a package mailed from Atlanta, Georgia, by registered mail would arrive at the 36th Street facility if it were addressed to an address within the area covered by that facility.

For this hypothetical, let us assume that the package is valued over $400, declared value over $400.

Can you tell us what procedures would be followed?

A At the point of acceptance in I believe you said Georgia, the receiving employee should at that time, when he placed a registered number on the piece, put an X following the number.

It would then be dispatched on a manifold bill to New York, New York. Now, it may at that time -- it might have been -- the pouch containing the piece could have been dispatched to AMF Kennedy or a pouch could have been made up direct to the New York, New York Post Office. This would be determined based on the volume of mail that the office where the piece originated generated for New York City.

THE COURT: What was the other besides the New York City Post Office?

THE WITNESS: Airmail field at Kennedy Airport.

A Regardless of the destination of the pouch, the piece therein would then be verified by the person opening the pouch against the manifold and if correct the manifold would be receipted showing he received it and the time of receipt, it would be postmarked, which is a round rubber -- we refer to it as a plug -- showing the name of the office who received it. One copy of that bill would be returned to the dispatching office so they would have proof that they had sent the piece out, that it had been received by the next destination.

Assuming this piece came into the General Post Office at New York, it would then be relisted on another manifold from the General Post Office at to the 36th Street facility, and in all probability it would be placed in a pouch which would be secured with a rotary lock. If this were the case, the manifold would have included at the top the rotary lock number, which is stamped into the side of the metal lock, plus the ascending reading on the meter, which is a part of that lock.

Q Inspector Jones, I show you what has previously been marked as Defendants' Exhibit 13 for identification, and ask if you can identify this item (handing).

A This is a standard Post Office rotary lock, number

S19879, with the ascending reading 0055.

Q Does that lock have any direct connection with this case?

A None whatsoever.

Q Can you explain how that lock operates in connection with the transport of registered mail?

A As I said, the reading on the ascending right now is 0055.

If and when this lock is closed, turned to a closed position, that number will remain the same.

However, the next person who uses a key and opens this lock, at the time it is opened it will move on up to 0056.

Q That is the type of lock that registered mail is transported under?

A Normally if you have any amount and as long as there is any value involved, yes.

MR. WILSON: Defendants offer in evidence Exhibit 13 for identification.

MR. FELDMAN: No objection.

THE COURT: All right, received.

xx (Defendants' Exhibit 13 received in evidence.)

Q Inspector Jones, I show you what has previously been marked as Defendants' Exhibit 14 for identification, and

ask if you can identify that item (handing).

A This is a standard U.S. number 2 mail pouch which is used for dispatch of registered mail or other mail.

If this were the pouch --

THE COURT: What is the exhibit number of that?

MR. WILSON: 14 for identification.

A If this were the pouch that would be used by the General Post Office to make their dispatch to the 36th Street facility, the employee at the General Post Office, before using the pouch, if he follows instructions, is required to check and make sure that there are no cuts, that the seams are solid and he should, in fact, put his elbow in the pouch and check inside it to make sure there is nothing in there before he starts to load the registered mail into the pouch.

The pouch has a metal holder at the top where we put what we referred to as the slide label showing the facility the mail is addressed to and the facility that prepared the pouch.

Q After the pouch is filled, what is then done with it?

A After it is filled or when they have placed what registered mail is involved in it, they simply bring the leather strap around, put it over this hasp and the rotary lock will go through that hasp.

MR. WILSON: Defendant offers in evidence Exhibit 14 for identification.

MR. FELDMAN: No objection.

THE COURT: Received.

xx (Defendants' Exhibit 14 received in evidence.)

Q I think we have gotten to the point where the General Post Office is dispatching this hypothetical parcel of registered mail to the 36th Street facility.

A After the General Post Office would have prepared this pouch, rotary lock pouch with the registered mail therein, they also put a manifold copy inside the pouch listing -- listed thereon would be the numbered pieces, the X pieces, and a bulk count of the remaining pieces in the pouch.

This pouch would then be reenclosed in another identical pouch which would be locked with what we refer to as an iron lock. This lock is a simple Post Office lock which does not have the ascending or descending -- the ascending capability. There would be no way of determining if this lock were taken off the pouch and replaced at any point between the two locks. When the iron lock pouch would reach the 36th Street facility, an employee at that point would, using an L.A. key, open the pouch and upon noting the rotary lock inside, this rotary lock pouch should be taken to the registry section.

There is a special rotary key which is used to unlock that pouch and requirements, postal requirements are that that key be maintained within the registry section. In fact, the regulations require that it be -- the chain on the key be hitched to some fixture inside the registry cage, section to preclude it being lost or taken outside.

Once the pouch got into the registry section, one of the assigned employees in that section would, using the rotary lock key, open the pouch, dump this mail onto what we refer to as a dumping table.

They would take the manifold bill which came with the pouch and at this point verify the individual listed pieces and then count the others to make sure that they had a combined total which equaled the bulk and listed pieces as shown on the manifold.

Q Continuing to follow this hypothetical parcel, after it had been counted as you just indicated by the receiving clerk, what would the next process that parcel go through be?

A It would then be placed -- well, at the 36th Street facility the pouch or the parcels -- let me backtrack a minute.

After the employee had verified the pieces in the pouch, if they agree with the count on the manifold he,

in turn, should sign a copy of that manifold with his name and the date received and a copy of this would be returned to the General Post Office so we would have a continual receipt system for the article.

At that point the registers in the pouch would be distributed by the employees working in the registry section to the various carrier routes that made delivery from the 36th Street facility. This is done at what we refer to as a distribution case. The mail is normally placed on the ledge of this case and the employees working there would then, after examining the individual pieces, based on the street address shown, distribute it to one of the many carriers who would make delivery from the facility.

They would then charge these pieces out to the carrier. By this I mean they might use a manifold, the same manifold form if they had many pieces going to the same firm. They would list them on the manifold and when the carrier came up to pick up the mail through this pass through I previously referred to, they would give him the registers, a copy of this manifold and allow him to verify the items before he signed a copy of that manifold and gave it back to the clerk in the registry section.

If it was an individual piece, they would use what -- I don't recall the form number, but what we call a

carrier charge out sheet. They would list the piece on that form, the carrier -- there was a block where the carrier would initial that he had received it.

The mail would go out on the street with the carrier. Before the carrier completed his tour of duty for the day he must go back to the registry cage again and either turn in a signed receipt for all articles that were tendered to him for delivery or turn in the article if he could not effect delivery. This was a requirement and done on a daily basis before the carrier completed his tour of duty.

Q I think you have used the term L.A. key in an earlier response.

Can you define what you meant by that?

A I can't tell you what the initials L.A. stand for. It is an L.A. lock. It is what I referred to as the iron lock.

Q What is the procedure if the employee who opens the pouch, the registry pouch, finds that the manifold does not agree with the contents of the pouch in number or in some other respect?

A He should call this immediately to the attention of a supervisor and at which time a joint inventory or count should be made to try to rectify the error or the mistake.

If it could not be rectified, then the manifold,

which would be returned to the dispatching office, would be endorsed to show if it were a listed piece the registered number 221 was not received, or if it was one of the bulk items it would show that 49 pieces received in lieu of the 50 that might be shown on the bill. But there would be a notation made on the manifold and, as I say, a supervisor should be called in to double check the apparent loss of a piece of mail.

Q What if the employee, upon dumping the contents of a newly opened registered pouch, finds that one of the registered parcels is damaged in some way, opened, torn, etc.? What is he to do?

A At this point, again, call a supervisor, report it to his supervisor, have the supervisor examine the article.

If it is damaged, they should seal it with what we refer to as an official seal. This is a small piece of paper about the size of some of our large commemorative stamps that are now being sold. It is a gum paper.

This would be affixed over the damaged portion and the employees who placed it there should initial the form.

They should also endorse the manifold to show that register number so and so was received in a damaged condition if that was the fact when the parcel was received.

Q On the date that you arrested Mr. Stephens, how

many other employees did you observe to work in the registry section?

A Two.

THE COURT: This is what date?

THE WITNESS: March 22, 1969.

Q Do you recall what day of the week that was?

A Yes, sir. Saturday morning.

Q Was there any particular reason that you chose to conduct this portion of your investigation on a Saturday?

A Yes, two reasons:

One, the observations -- the facts reported to me by Mr. Moffa and Mr. Parisi who had been there the previous Saturday, plus the fact I had received reports that wrappers from registered mail had been found at the facility on Saturday.

Q Was the test parcel which has been marked as Exhibit 18 for identification the only test parcel which you placed in the registry section on March 22nd?

A No, sir. I placed one other parcel there.

Q Do you have that parcel?

A No, I do not.

Q Did you observe that parcel to be in any way mishandled or handled in violation of postal regulations by any postal service employee?

A No, it was not, and subsequently, using a supervisor, we had them recover the parcel and it was returned to me.

THE COURT: Give me a minute to go back to something.

(Pause)

THE COURT: Okay, go ahead.

Q On how many occasions other than March 22nd did you place observers in the gallery with the specific task of observing the conduct in the registry section of the 36th Street facility?

A Only one specific instance --

MR. FELDMAN: Excuse me, could you repeat the question, please?

THE COURT: Yes. I would like to hear the question, too.

MR. WILSON: I will ask the reporter to read it.

(Record read)

MR. WILSON: May the witness answer that question?

THE COURT: Yes, sure.

A On only one occasion, the prior Saturday, March 15, 1969.

Q When you took over the assignment, including the 36th Street facility in, I believe you said, January, 1969, were you advised that prior observations had been conducted

of the registry section at the 36th Street facility?

A After I took over the assignment and became aware that there was an apparent depredation problem at the facility, I discussed it with the two special investigators who had worked this area of the city for many years, and they advised me that they had been unable to conduct lookout gallery observations of the registry section at the facility previously due to the fact the registry section was located in an area which was not afforded observation from the gallery.

I subsequently determined as a result of the prior losses, one of the inspectors who was assigned there prior to me had made arrangements with local management to have the registry section moved into an area where we would have observation from the gallery.

Q From your observation point in the gallery on March 22, 1969, how far away were you from Mr. Stephens at the time you were observing him?

A I would estimate 12 to 18 feet.

Q Did you view the events from the gallery with the unaided eye?

A No, sir. I used binoculars on occasion.

Q Who was it that actually placed the test parcel into the registry section?

A Mr. Beck.

THE COURT: He said that. We don't have to have repetition.

Q How did you choose Mr. Beck?

A Because he -- the special investigators who had been there for a period of time had known him for a long period had gone to him on prior instances for information and because of the fact that the previous Saturday the two men who were in the gallery reported to me that they saw him doing nothing out of the ordinary in handling the mail.

Q How did you choose the names and addresses of the sender and addressee of the test parcel?

A I knew a jeweler named Mr. Oliver and I went to him simply because I knew him and asked him for some of his address labels and also I purchased the two zircons from him.

The name of the party in California, one of the special investigators picked that, I guess, right out of the air, because as far as I know it is a completely fictitious name and firm.

But the main purpose or reason for selecting these was every indication indicated that whoever the depredator was was interested in jewelry parcels, either bearing the name of a jeweler as a sender or as the addressee.

Q Was there any specific purpose to choosing the

contents of the article which you chose?

THE COURT: He has already said that; jewelry.

MR. WILSON: All right, your Honor.

Q Was there any reason that you did not list this article or did not arrange to have this test parcel listed on the manifold in the registry section?

A As I recall, I think the main reason was it would be almost -- it would be physically impossible for me to control that parcel. If I had taken it to the General Post Office to have it put in the mail stream at that point, I could not personally observe it and control it from that point until it got into the registry cage at 36th Street facility. By putting it -- having Mr. Beck place it there, I was in a position to definitely know that nobody else had mishandled that piece of mail.

Q Did your responsibilities concerning this investigation end with the arrest of Mr. Stephens on March 22, 1969?

A No, they did not.

Q What further responsibilities did you have?

A In addition to arraigning Mr. Stephens and proceeding with the criminal prosecution, I had to issue a letter of what we refer to as adverse action to effect his removal from the postal service.

I also had to review records and files to determine if there were any other reported losses which in accordance with the Boerner decision could be charged to the depredation of Mr. Stephens.

Q In making the determination of what losses you would charge to Mr. Stephens, were you given standards by which to operate?

A Yes.

Q If so, what were they?

A Our instructions required that we review Forms 1510, which is a Post Office tracer form; Forms 673, which is a report of arrival parcel; and Forms 565, which are claims for indemnity for insured COD registered mail to determine if there were any of those which could be charged to the depredator that had been apprehended.

The requirement was that we determine, one, the loss did occur; two, the loss related to a similar type mail as was stolen by the depredator at the time of his apprehension; three, that no other employees had been arrested at this facility stealing the same type mail; and four, that the losses ceased following the apprehension of the depredator.

Q Using that approach, how many losses did you recommend be charged against Mr. Stephens?

THE COURT: Can't you ask him what he found in the

records?

MR. WILSON: I was going to do that seriatim, your Honor. I just wanted to get a total to begin with.

THE COURT: No, let's not get a total to begin with. Let us just find out what losses he found out.

Let's take a short break now.

(Recess)

BY MR.WILSON:

Q Mr. Jones, did your observers report to you concerning their observations on March 15th, I believe it was, 1969, at the registry section?

A Yes, yes, they did.

Q Was that an oral report or a written report?

A Oral and written.

Q I show you what has previously been marked Defendants' Exhibit 15 for identification, and ask if you can identify that (handing).

A These are handwritten notes which were given to me by Mr. Parisi and Moffa. I don't recall which one, but prepared by them following their observations on the morning of March 15, 1969.

Q And is this what you meant by the written portion of their report?

A Yes.

MR. WILSON: I am not offering this in evidence at this time, your Honor.

THE COURT: All right.

Q Mr. Jones, can you just briefly recap what documents you referred to in making your determination concerning which losses to charge Mr. Stephens with?

A Forms 1510, 673, 565, and in some cases I had arrival wrappers from registered mail which had been found at the facility.

Q As to the forms that you have mentioned, is each of those forms kept by the postal service in the ordinary course of its business?

A Yes.

Q Is it the ordinary course of the postal service business to maintain such forms?

A Yes, it is.

Q And are those forms prepared at or about the time of the claims or losses to which they relate?

A The 1510, which is a tracer form, is not prepared until either the sender or the addressee of a piece of mail goes to a postal facility and complains that the article was not received by the addressee. At that time the tracer form would be prepared.

The Form 673, which is a report of rifled parcel,

should be prepared by the employee and/or supervisor at the location where that rifled wrapper was found.

The forms 565, which is a claim form for indemnity relative to registered, insured or COD mail, is prepared by postal employees based upon -- either by postal employees or by the mailer or addressee when it becomes evident that a piece of registered, insured or COD mail has not reached its destination.

Q As to each of the registered parcel losses which you charged to Mr. Stephens, can you tell us what was the evidence or documents upon which you based that charge?

A Not offhand without referring to records, but in general I refer --

THE COURT: Look, let's try to get a format to do this in.

I assume you got some specific records, proof.

MR. WILSON: I do, your Honor.

THE COURT: Let's get them in. Okay?

Q Inspector Jones, I show you what has previously been marked as Defendants' Exhibit 23 for identification, and ask if you can identify that document (handing).

A This is a Form 2029A. It is a report prepared by Inspector T.W. McGrew, one report dated August 19, 1968, the other one August 23, 1968, relating to registered article

number --

THE COURT: What are the dates? These are two reports?

THE WITNESS: Yes. A preliminary report dated August 19, 1968, a final report dated August 23, 1968, relating to a complaint of rifled parcel -- registered parcel number 15265,

Q Have you ever seen that report before?

A Yes, I have. Either this one or copies of it.

Q And in what connection did you see that report?

A A copy of the report was referred to me and was used by me as a basis for charging this particular loss against Mr. Stephens.

THE COURT: Look, I assume that you have got one kind or another record showing losses of registered mail from the 36th Street facility, right?

MR. WILSON: Yes, your Honor.

THE COURT: Okay.

Have you shown these records to plaintiff's counsel?

MR. WILSON: I believe plaintiff's counsel is aware of all records that we have concerning these losses.

THE COURT: All right.

Maybe it would help to just see where we stand

on the admissibility of evidence.

I take it you are going to want to introduce into evidence such records and have the witness testify about them and explain them, right?

MR. WILSON: That's correct, your Honor.

THE COURT: Okay. And obviously these come from other people. In other words, he didn't investigate and literall report every loss. There is an accumulation of reports by various people, right?

MR. WILSON: That's right.

THE COURT: Mr. Feldman, are you going to object to the introduction into evidence of such reports?

MR. FELDMAN: Yes.

THE COURT: All right. What is the ground?

Do you have the witnesses here who actually made the reports? Do you have Mr. McGrew?

MR. WILSON: As to some of the reports we do, your Honor. Not, unfortunately, to all. That relates to the fact that this case goes back some time and some of these people are no longer available to the postal service. They are no longer employed, they are retired.

THE COURT: Let us suppose you got reports of people who you don't have as witnesses.

MR. WILSON: That's right.

THE COURT: And these reports will say that on such and such a date I made an investigation and I found rifled packages and so forth, right?

MR. WILSON: That's right, your Honor.

THE COURT: What is your ground for admitting this evidence?

MR. WILSON: As a rule, the reports of this type will reflect that the inspector examined official records of the postal service and found certain entries or lack of entries in those records which he examined.

That is incorporated in the inspector's report which we are attempting to introduce here.

We believe that this is an official record of the postal service, that it is maintained in the ordinary course of the postal service business and is admissible under, basically, the shop record or shopbook rule.

THE COURT: What about that?

MR. FELDMAN: These reports contain overriding information. I guess there will be about two dozen reports in this case.

Some of the information contained in them is quite inflammatory, most of it is conclusory and it is based upon other documents which apparently is or at one time was in the possession of the Post Office which I have been unable

to look at.

They contain no personal observations by the person making the report, it is merely that he investigated other reports and there were rumors that there were depredations in the 36th Street facility, that Mr. Stephens might be connected with it.

I think it would be too prejudicial in this case to the plaintiff to introduce these reports. They are really self-serving on the part of the Post Office.

THE COURT: We have one example.

Are you offering Exhibit 23?

MR. WILSON: I was going to offer Exhibit 23 through Mr. McGrew, who prepared it, but we will have this problem arising as to others.

Your Honor, if I may --

THE COURT: To have any chance of getting this case finished today, what is the most efficient way to get the bulk of the reports in?

It seems to me -- can't we have the witnesses testify about reports they drew? Isn't that the easiest way to try to lay the foundation?

MR. WILSON: As to those reports it is.

THE COURT: Do you have any further reports that this witness drew up?

MR. WILSON: Not written reports, no, your Honor.

THE COURT: Are there instances where he personally checked, did things to find out missing mail, that he isn't just simply relying on reports of other people?

MR. WILSON: Yes, your Honor. There are a number of things.

THE COURT: Why can't he go ahead and testify on his personal knowledge of instances of missing mail?

MR. WILSON: He can, your Honor. I am prepared to do so.

THE COURT: Okay, let's go with him on that.

Q Inspector Jones, as to the losses which you charged to Mr. Stephens, which of them, if you can recall, were based on investigations which you did or conclusions which you drew from evidence other than inspector's reports in your possession?

MR. WILSON: I would ask your Honor whether the witness can refer to notes just that he has made because of the number of items involved here.

THE COURT: Of course he can, yes.

A Register number 541632, register number 76--

THE COURT: Listen, I am not interested in getting a list.

What did you find out personally about register

number 541632. Tell us the story about that.

THE WITNESS: I would have to see the notes, sir, the file on that particular register.

THE COURT: All right, get the file.

Q May I have the number again, Mr. Jones?

A 541632.

I'm sorry, that is incorrect.

Q That is the case number.

MR. FELDMAN: That is the registered mail number.

A That is the registered number.

MR. WILSON: If I may, your Honor.

Q For shorthand we had numbered these. Can you give me the number of that one?

A No, I can't. I don't have it.

Q I show you an unmarked file and ask if there is anything in there that you referred to or you based your investigation upon (handing).

A This is the file we discussed that was not going to be introduced, I believe. I'm sorry I brought it up.

THE COURT: Listen, this is not testimony. Can't you get your case organized?

In other words, here is a witness. He has testimon on some subjects on which he can produce competent testimony on.

Now, I take it that what you told me, there are instances where he personally looked at original records or did something pursuant to which he discovered facts about missing mail.

Were there such instances?

THE WITNESS: Yes, your Honor.

THE COURT: All right. Can you begin to describe such instances?

THE WITNESS: Yes, sir.

THE COURT: All right, begin.

THE WITNESS: Again, your Honor, I will have to have the file here.

THE COURT: Why isn't this organized so you can give him one file after the other?

MR. WILSON: Your Honor, it was organized in such a way that he would be able to testify as to the basis on which he had arrived at the conclusion that Mr. Stephens was chargeable with these losses. The basis would be stated to the court and counsel, and then as to those where he relied on other investigators' reports where he had those investors' reports, we were going to put those reports into evidence through those investigators, your Honor.

The feeling was that Mr. Jones has had responsibility for this overall investigation and he could explain the basis

on which each of these determinations was made.

THE COURT: The trouble is I would think that what we would want to do is to take it -- maybe I'm wrong, but I would think that the ultimate question is whether you have proved that this plaintiff took this mail and under the Boerner case what it takes to make a prima facie case and so forth.

If somebody is going to use a report or testify about a report which indicates a state of facts, that report really should be admissible and should be admissible to prove those facts, shouldn't it?

MR. WILSON: I agree, your Honor.

THE COURT: And that is what you are trying to do.

I am not just interested in the fact that the report is significant here and that he read it, I am interested in the underlying facts. Right?

MR. WILSON: Yes, your Honor.

THE COURT: Okay.

In order for him to testify about those reports and use those reports, those reports should be in evidence. There ought to be a way.

If this witness is not the witness to get those reports into evidence and some other witness is, let's have those other witnesses.

I know what you have done, but I tend to feel that he ought to be -- I shouldn't take a long report listing a lot of facts subject to connection. That is what you are asking me to do, isn't it?

MR. WILSON: I don't think so, your Honor.

As to some of these it was our intent to proceed that way, but we believe there is a valid argument that these are admissible under the shopbook theory, that these are business records of the postal service maintained in the ordinary course of its business.

THE COURT: Then you are offering Exhibit 23 through this witness?

Maybe I have mixed you up and I don't want to do that. I asked you about Exhibit 23. It is two reports made by Inspector McGrew.

MR. WILSON: I did not intend to actually offer these in evidence, but I believe I could at this time through this witness.

THE COURT: If you aren't offering them-- you were not intending them?

MR. WILSON: I was going to offer them through Mr. McGrew, who prepared them.

THE COURT: What were you going to do with Exhibit 23 through this witness? What was the point of it?

MR. WILSON: I was going to have him establish what the basis was for his actions in charging Mr. Stephens with this loss.

He did not, as far as I know, independently investigate this loss, he acted in reliance upon this official postal service record and that would be admissible either through Mr. Jones or Mr. McGrew.

If the court's preference is, and I won't question it, that that be admitted through the testimony of Mr. McGrew, we will abide by that request.

THE COURT: We are just going on and on in time and maybe I missed it. But we have an objection. We have a notice from the plaintiff's side that they are going to object unless you lay a pretty good foundation and it is up to you to attempt to lay what foundation and offer the documents.

MR. WILSON: All right, your Honor.

Then may I ask that this witness be excused and--

THE COURT: Let's excuse the witness.

MR. WILSON: I will put on the inspectors who prepared the prospective reports.

THE COURT: And you will still have the right to cross-examine this witness.

MR. FELDMAN: Yes.

(Witness temporarily excused.)

T H O M A S W. M c G R E W, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. McGrew, where are you employed?

A I am employed at New York, New York, by the U.S. Postal Service.

Q And in what capacity are you employed there?

A I'm a postal inspector.

Q For how long have you been employed as a postal inspector?

A Since October, 1967.

Q Prior to becoming a postal inspector, were you employed by the postal service?

A Yes.

Q And in what capacity and for how long?

A I first began employment with the postal service in 1936, employed continuously since that time, except for the time I spent in the Army. I was employed as a foreman, as an RPO clerk.

Q Do you recall investigating the loss of a registered parcel number 15265?

A Yes.

Q Do you recall what that loss related to?

A It was a gold railroad watch --

THE COURT: Gold what?

THE WITNESS: Gold railroad watch mailed by a doctor in California to the Elgin Watch Company in New York.

Q What was your responsibility in connection with the investigation of that loss?

A To determine how the loss occurred and to make a recommendation as to whether the claim which had been presented should be paid.

Q Did you make a report of the results of your investigation?

A Yes, I did.

Q I show you what has been marked as Defendants' Exhibit 23 for identification, which I believe is actually two reports, one dated August 23, 1968, consisting of one page, the other dated August 19, 1968, consisting of two pages (handing).

Inspector McGrew, is that exhibit the report or reports you prepared concerning your investigation of the theft of registered parcel 15265?

A Yes.

Q Is that your signature at the foot of the reports?

A In both instances, yes.

Q Can you tell us what your investigation disclosed?

A I examined the registered records for the 36th Street facility which were kept at the Grand Central Station.

The Form 3867, the carrier charge out sheet, indicated that the parcel in question had been assigned to a carrier. The carrier then placed a forwarding address on the parcel and returned it to the registry section.

However, when the carrier received the parcel, he had to prepare a Form 3849, which is a yellow receipt form signed by a person who receives a registered article. The purpose in this case was to record the forwarding address to which this registered article was forwarded.

The carrier returned the registered article --

MR. FELDMAN: I am going to object to this testimony, your Honor. The witness has no personal knowledge of what the carrier actually did and what was said on the particular forms.

THE COURT: Now wait a minute.

Did you examine postal records?

THE WITNESS: I examined Form 3867, the carriers sign out sheet.

THE COURT: Form 3867?

THE WITNESS: The carrier sign out sheet.

This register was charged out to the carrier.

THE COURT: And that showed that the package was

charged out to a carrier?

THE WITNESS: Right.

THE COURT: What else did it show?

THE WITNESS: It also showed it was returned and I was cleared by --

THE COURT: It was returned?

THE WITNESS: To the registry section.

THE COURT: Did it show it was returned with a forwarding address?

THE WITNESS: It was returned. I don't recall whether it shows it was returned for that reason, but the Form 3849, which was on file, the receipt form, showed that the form was forwarded.

THE COURT: All right. And you saw Form 3849?

THE WITNESS: And Form 3867.

THE COURT: And Form 3849 showed that the parcel was to be forwarded, right?

THE WITNESS: Yes, to a certain address.

THE COURT: And Form 3867 showed that the package was returned to the registration section of the 36th Street facility?

THE WITNESS: Yes. And the carrier was cleared by --

THE COURT: Is that right?

THE WITNESS: Yes.

THE COURT: All right. As far as that is concerned, what is the objection?

MR. FELDMAN: These are all documents that he is-- the problem is I haven't been able to see these documents.

I don't think these documents exist any longer and I think that they are, in fact, hearsay.

THE COURT: Do the documents no longer exist?

THE WITNESS: We have a retention period of three years on those documents.

THE COURT: Did you make a record at the time you saw these documents of what you had seen in the documents?

THE WITNESS: I reported what I saw. I saw the documents themselves.

THE COURT: Mr. Feldman, I just -- I think this is the best evidence available of the situation.

I think that within the rules, I think I am referring to Rule 804, subdivision 24 -- and I don't know if there are any other subdivisions covering it -- but it seems to me this is a situation where--

MR. FELDMAN: Which rule is that again, your Honor?

THE COURT: Look, let us be precise.

Under what rule do you offer this testimony? Let us get ourselves squared away.

MR. WILSON: Your Honor, I believe that these are official records.

THE COURT: Rule 804 -- I'm sorry, Rule 803.6, isn't that right?

MR. WILSON: I certainly am seeking to introduce Inspector McGrew's report under that theory, under 6.

THE COURT: Look, he is now testifying about what he found in these Forms 3867 and 3849.

He is telling us that those forms no longer physically exist.

THE WITNESS: I don't know that, but they shouldn't.

THE COURT: Nobody has them here today and the retention period has long since gone.

THE WITNESS: Two or three years, yes.

THE COURT: Okay.

MR. WILSON: I do believe that Inspector McGrew's testimony is the best evidence that can be produced today --

THE COURT: I assume it is unless the records are still around.

MR. WILSON: We have made a search for that and we have an affidavit in transmit, I am told.

THE COURT: You are telling me that these original records no longer exist to the best of your knowledge, right?

MR. WILSON: That's correct, your Honor.

THE COURT: Okay.

The best evidence of those records is what he observed from them, which he recorded in his report and which he is now testifying about, right?

MR. WILSON: Yes, your Honor.

THE COURT: What rule encompasses that?

MR. WILSON: I believe it is 1004, which talks about admissibility of other evidence and contents and provides that an original is not required and other evidence of the contents of a writing is admissible if the originals are lost or destroyed, unless we did it in bad faith, and I don't think that there is any claim that that is the case here, or the original cannot be obtained. I don't think that is applicable.

THE COURT: All right. As far as the records themselves, don't you go back to Rule 803.6?

MR. FELDMAN: Relating to this report, this report was made on August 19th and August 23rd of 1968 and the package was mailed from California on June 2, 1967, about 14 months later.

One of the criteria in paragraph 6 has to be made at or near the time.

THE COURT: Yes. We can confirm that.

Did the original form, such as 3867 and 3849 which

you looked at ir your investigation, were they made contemporaneously with the events that they record?

THE WITNESS: I assume that they were made on the day the piece was charged out.

THE COURT: They would normally be made?

THE WITNESS: That is normal course.

THE COURT: Of course.

If you are talking about his ability to testify regarding what was in 3867 and 3849, he is testifying about a contemporaneous record, so I don't think --

MR. FELDMAN: That would be, yes.

THE COURT: All right.

His own report is his investigative report.

And you recorded what you saw in those forms, right?

THE WITNESS: Right, right.

THE COURT: It seems to me that probably -- I mean, what the government is doing is having his testimony, and you will then later seek to introduce his written report itself, right?

MR. WILSON: Yes, your Honor.

THE COURT: As being an investigative report made in the normal course of business.

We will cross that bridge when we get there.

We can certainly proceed to have his testimony about what he saw in these original records.

Okay, let's go.

The record showed that the thing went back to the registry section in the 36th Street facility?

THE WITNESS: In the carrier's --

THE COURT: What do the records show happened then?

THE WITNESS: It showed that the carrier was cleared by clerk Stephens.

Q What do you mean by cleared?

A In other words, it indicated -- the form indicated that the registered article had been received from the carrier by clerk Stephens and was now in the register cage.

Q What else did you determine concerning that parcel?

A Determined that the article was discovered in the registered cage split open with the contents -- without contents and --

THE COURT: And what form showed that?

THE WITNESS: Well, that was shown by form Post Office envelope 87 used for registered mail damaged, unsealed or without cover, was endorsed to show that this register had been forwarded -- discovered without contents, the box had been split. Three employees in the register cage witnessed this on the envelope.

THE COURT: The envelope is the split envelope?

THE WITNESS: No, the envelope was used to place the rifled parcel in.

In other words, this was used to forward damaged--

THE COURT: In other words, there is a regular Post Office envelope that is --

THE WITNESS: I'm not sure. My report reflects that Post Office envelope 87 used for registered mail damaged, unsealed or without cover was endorsed to show this.

THE COURT: Post Office envelope 87, what does that mean?

THE WITNESS: This is a name of a form. It is a number of a form.

THE COURT: All right. That's what I thought I asked you.

This Post Office envelope 87 is an envelope which is to be used to put damaged things inside it?

THE WITNESS: At this time I cannot recall. I have nothing to do with registered mail for five years.

THE COURT: Just generally.

THE WITNESS: My report reflects that I looked at an envelope 87 which was endorsed and was used for registered mail damaged, unsealed or without cover, which means without the wrapping.

THE COURT: Okay, let's go ahead.

What else?

THE WITNESS: Okay.

I also had the package which was delivered without contents to the Elgin Watch Company as part of the investigative file.

Q Inspector McGrew, you mean you actually had physical possession of the package or access to it?

A I either had it or access to it, because my report reflects that the package was delivered and the wrapper recovered.

My report also reflects --

THE COURT: You know -- has there been any attempt to stipulate the facts? This is not a criminal case, this is a civil case. We are going to be sitting here a long time groping around with this kind of detailed material and I am going to have to ask you -- has there been any attempt to stipulate the facts about what these investigations showed, what these records showed?

MR. WILSON: No, not on our part.

THE COURT: I think you better get busy now and work on it, because this is not -- the best and most efficient way to cover this material is to have a stipulation as to these facts about the postal records showed the receipt

of certain materials in the registry cage on a certain date, showed that such item was later found under certain circumstances broken open.

How much of these instances have you got?

MR. WILSON: There are a total of 12 parcels involved in this case.

THE COURT: All right. 12 parcels.

MR. WILSON: That is 12 instances, then.

THE COURT: 12 instances.

I don't see why it just isn't stipulated, what the record shows.

Any responsible, you know, lawyer in your position -- I don't think you have been asked, I am not saying you are irresponsible --

MR. FELDMAN: We have stipulated as to certain records, your Honor, but not these particular investigative reports.

THE COURT: No. There is nothing in the stipulation that I have about the records that showed the situation about the mail.

MR. FELDMAN: No, that is true.

THE COURT: That should be a subject of a stipulation as much as anything else.

I think you ought to go over, you ought to take

this lunch hour and go over-- I mean, you can get a sandwich sent up or something -- go over those records and see what we can put on the record after lunch, because we are going to spend a lot of time to no avail. We are going to have witnesses kind of grope -- we are going to have witnesses trying to recite the contents of reports that they made years ago which were, in turn, based on records that were older than that.

It is all going into evidence. I mean, the raw facts about what those old records showed will go into evidence and it is just a question of how laborious and how much time we want to give that.

I am going to ask you to take your 12 instances and see if you can't work out a format for putting something on the record after lunch that records kept in the normal course of the Post Office business showed receipt at certain point, non-receipt at another point or rifling or whatever happened.

We will adjourn until 2:15 and you come back with that kind of a stipulation.

(Luncheon recess)

AFTERNOON SESSION

3 P.M.

THE COURT: Where do you stand on the stipulation?

MR. FELDMAN: We have stipulated to certain documents, your Honor.

What we have done is essentially cut and pasted the documents that we feel are relevant and --

THE COURT: What about the contents? Why can't the contents be paraphrased?

In other words, on each transaction stipulate that the Post Office records -- nobody carries the number of the Post Office record. Nobody will ever care about that and it should be stipulated that the Post Office records show that mail was -- there are certain essential parts of the stipulation.

What is the item, what is the registered number, where it was received, what condition it was found in at its later date or that it was missing or not delivered or whatever happened.

MR. FELDMAN: That information is contained in the documents.

THE COURT: And the claim was made and the amount of the claim and the claim was paid by the government.

There should be that stipulation for each item,

unless there is an controversy of fact on it, and if there is a legitimate controversy on fact it should not be stipulated, we will go into the controversy.

If it is more convenient to just use the redacted documents, that's fine.

Okay, what have you got?

MR. WILSON: Your Honor, I think maybe I should address myself to the stipulation situation for a moment.

I think we have agreed on all documents that are going in. There are one or two lines on a couple of them that were taken out.

What we would propose to do is, given time, prepare a formal written stipulation with the documents attached as exhibits and the parties agreeing that those exhibits shall be treated as in evidence.

I think that this trial is going to have to basically revolve on a bit more testimony from Mr. Jones, one other bit, and post-trial briefs to unscramble --

THE COURT: No, we don't have to have post-trial briefs to unscramble anything, we can get it unscrambled right here.

What documents are you going to stipulate to?

Let me see what these documents are.

MR. WILSON: Your Honor, it is in handwritten form.

For example, as to the first register article, that is the portion of the report --

THE COURT: Let us go off the record.

(Discussion off the record.)

THE COURT: All right, on the record.

We have had a discussion off the record about the format for handling these factual problems we were discussing and both sides have agreed to the admissibility into evidence of various documents from the postal service or the Post Office Department about the claims of stolen property.

The first claim relates to registered article 614477 And as I understand it, the documents contained in what has been tagged Defendants' Exhibit 1 for identification are agreed to be admitted into evidence.

Is that correct, Mr. Wilson?

MR. WILSON: Yes, that's correct.

THE COURT: You are offering these documents, right?

MR. WILSON: I think the parties have agreed upon it.

THE COURT: Both parties have inspected the documents contained in this clip under the heading 1 for identification and agree to their admissibility, right?

MR. FELDMAN: That's correct.

THE COURT: Okay. 1 for identification is received.

(Defendants' Exhibit 1 for identification was received in evidence.)

THE COURT: Now let us go to the next claim.

The next claim relates to register number 15265, and the documents pertaining thereto are in Exhibit 2 for identification.

And you both agree that these documents are to be admitted, right?

MR. FELDMAN: Yes.

MR. WILSON: Yes, we have so agreed.

THE COURT: So Exhibit 2 for identification is received.

(Defendants' Exhibit 2 received in evidence.)

THE COURT: What is the next claim?

MR. WILSON: Exhibit 3. Do you want the registry number?

THE COURT: Right.

MR. WILSON: 192139.

THE COURT: I would just like those in chronological order in the packages.

MR. WILSON: The various registers that we are giving you are in chronological order.

I will have to check within the package.

I think they are.

THE COURT: The next claim is register number 192139, and the documents are in Exhibit 3 for identification, agreed to be admitted. Right?

MR. FELDMAN: Yes.

MR. WILSON: Yes, your Honor.

xx (Defendants' Exhibit 3 received in evidence.)

MR. WILSON: The next one is 4 for identification, which is register number 541632. However, as to that particular registry, the government will not be producing any evidence. In fact, we are waiving our claim on that.

THE COURT: The government is waiving its claim so that is that.

MR. WILSON: We will not be producing any evidence on that.

THE COURT: All right, the next one.

MR. WILSON: The next will be register number 769446.

THE COURT: Let us just revise our numbers. We will call that the fourth claim. That's easy enough. We will call it documents Defendants' Exhibit 4.

What is the number on that again?

MR. FELDMAN: 769446.

THE COURT: All right.

All right, the documents on this claim are in

Exhibit 4 for identification, agreed to be received. Right?

MR. WILSON: Correct, your Honor.

MR. FELDMAN: Yes, your Honor.

THE COURT: All right. Exhibit 4 is received.

xx (Defendants' Exhibit 4 received in evidence.)

MR. WILSON: The next one would be Exhibit 5, relating to register number 6487.

THE COURT: The same for Exhibit 5, is that correct?

MR. FELDMAN: Yes.

MR. WILSON: Yes.

THE COURT: All right. Exhibit 5 is received.

xx (Defendants' Exhibit 5 received in evidence.)

THE COURT: The next one.

MR. WILSON: The next one is Exhibit 6, and it relates to register number 550191.

THE COURT: The same for Exhibit 6?

MR. FELDMAN: Yes.

MR. WILSON: Yes, your Honor.

THE COURT: All right. Exhibit 6 is received.

xx (Defendants' Exhibit 6 received in evidence.)

MR. WILSON: The next one is Exhibit 7, and it relates to register article 2580.

THE COURT: The same for Exhibit 7?

MR. WILSON: Yes.

MR. FELDMAN: Yes.

THE COURT: Exhibit 7 is received.

xx (Defendants' Exhibit 7 received in evidence.)

MR. WILSON: Exhibit 8 relates to registered article 50926.

THE COURT: The same for Exhibit 8?

MR. FELDMAN: Yes.

MR. WILSON: Yes, your Honor.

THE COURT: All right, 8 is received.

xx (Defendants' Exhibit 8 received in evidence.)

MR. WILSON: The next is Exhibit 9, and it relates to registered article 265751.

THE COURT: Okay on Exhibit 9?

MR. WILSON: Yes, it is agreed.

MR. FELDMAN: Yes.

THE COURT: All right. Exhibit 9 is received.

xx (Defendants' Exhibit 9 received in evidence.)

MR. WILSON: Exhibit 10 relates to registered article 94281.

THE COURT: Exhibit 10 is received.

That is agreed, is that correct?

MR. FELDMAN: Yes, it is.

MR. WILSON: Yes.

THE COURT: All right.

xx (Defendants' Exhibit 10 received in evidence.)

THE COURT: All right, the next one.

MR. WILSON: Your Honor, on Exhibit 11 for identification relating to registered package 1120, the parties are not in complete agreement on the evidence as to this article.

We would like to introduce what we have marked as Exhibit 11 as a stipulated exhibit and then the government will offer I think three more exhibits in relation to that.

THE COURT: You will lay a foundation on that?

MR. WILSON: Yes.

THE COURT: What is here as Exhibit 11 for identification, that much is agreed to be admitted?

MR. FELDMAN: That's correct.

THE COURT: Okay, that will be admitted.

MR. WILSON: Your Honor, for the record, a copy that has been put in evidence of Exhibit 11 does not clearly contain the payee's name and I would like to read that into the record.

THE COURT: All right.

MR. WILSON: Under payee's name and address, item 7, the entry should read "Ramball-jewelry store, 129 West 4th Street, Bethlehem, P.A., zip code 18015."

Below that, amount to be paid, the entry in that box reads $1,000, and the total amount box, item number 34, also reads $1,000.

THE COURT: All right. Exhibit 11 is received.

xx (Defendants' Exhibit 11 received in evidence.)

THE COURT: Anything else stipulated to be received?

MR. FELDMAN: No. That's it.

THE COURT: All right. Thank you very much. That is a tremendous help.

MR. WILSON: Your Honor, may I have two minutes? Some of my witnesses can now be released and sent home.

THE COURT: Okay. That is fine. You take a minute and I will begin looking at these documents.

(Pause)

THE COURT: Can I ask you something?

In connection with the amounts paid to these claimants, does it include postage refund?

MR. WILSON: In certain cases it does. On some of the forms it so states. It says --

THE COURT: But I mean, what you are trying to use as a claim in this action, are you concerned with postage refunds, not that it probably makes all that much difference?

gth

MR. WILSON: To be perfectly frank, I hadn't concentrated on it. I think there are eight or $10 totally.

THE COURT: Let's take it without postage refund.

MR. WILSON: Your Honor, we will not make an issue of the postage refund aspect.

S T E W A R T M. J O N E S, recalled.

MR. WILSON: Your Honor, I have a question.

You have indicated that you do not anticipate receiving post-trial briefs on this and it is my belief that some of those documents which the parties have stipulated to may not be self-explanatory.

Certainly certain of them are, but there are some which are not. I would ask guidance from the Court whether you want me to question Mr. Jones about those documents in order to explain certain bases of them or whether you want us to make the connections in a post-trial brief.

THE COURT: I tell you, I think we ought to do it right now.

If there are any questions you believe should be elicited on Exhibit 1, go ahead and do it.

I may have a question or two. I have looked at it just in the last few minutes. It is not all that complicated. I am trying to make out a chart for my purposes

containing this information, the registered number, the article, what I call the path or the route, relevant route, you know, where it appeared or where it disappeared, the name of the person making the claim and the amount and date of the payment of the claim.

I would be glad to hear you bring out any elucidation of Exhibit 1 that you want to.

First of all, I don't have my stipulation in front of me and I am trying to get it, but Exhibit 1 refers to the date January 26, 1966.

Was Mr. Stephens employed in the relevant location on January 26, 1966? Is that stipulated or isn't it?

MR. FELDMAN: It depends upon what the word relevant means, your Honor.

The package was mailed on January 21st, but I believe it is the claim of the Post Office that it would have reached Mr. Stephens on a particular day after the 21st.

THE COURT: What that Exhibit 1 says is, among other things -- let me see that, please.

It says, "Inquiry developed that this article was originally taken out as a special delivery article at the General Post Office and then dispatched to the Radio City Station on January 25, 1966, for regular delivery. However, the firm moved and the piece was redispatched to the General

Post Office as a bulk billed item and in all probability it was received at the 36th Street facility on tour 1, January 26, 1966."

As I read this, the relevant language of this particular report is the statement that it was in all probability received at the 36th Street facility on tour 1, January 26, 1966.

You know, we all know that in and of itself that statement only says so much and I c n worry about that, but it is January 26, 1966, which is the date referred to in this report. That is the relevant date of this item.

Right, Mr. Wilson?

MR. WILSON: Yes, your Honor.

THE COURT: And I don't happen to know sitting here, but maybe it is in the stipulation, whether Mr. Stephens was employed at the 36th Street facility on January 26, 1966.

Is that stipulated?

MR. FELDMAN: No, it is not, your Honor.

THE COURT: Was he? Are you willing to stipulate to that?

MR. FELDMAN: I believe that will be the testimony of Inspector Jones.

THE COURT: There are some things I need to know about these exhibits.

Why don't you take it. You see what you want to bring out about this and then if I have any questions I will supplement.

Do you have Exhibit 1 with you? Can I keep these up here?

MR. WILSON: I will ask your Honor for you to hand them to me if I need them.

I I do not know.

THE COURT: All right. You go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. WILSON:

Q Inspector Jones, were you able to determine whether Mr. Stephens was employed in the registry section of the 36th Street facility during the entire period of all of the losses that you have charged?

To make that question perfectly clear as to the time frame I am talking about, let me say from the date of the mailing of the first package involved in this lawsuit, was Mr. Stephens employed by the postal service working in the registry section of the 36th Street facility.

A Yes.

THE COURT: That means at least back to January 26, 1966, right?

THE WITNESS: Yes, sir.

MR. FELDMAN: I am going to object to this testimony, your Honor, because the time cards are in the courtroom and I think that they should be properly introduced, particularly --

THE COURT: Is there any particular issue that they are needed on?

If the time cards are here and they are accurate and they show that Mr. Stephens was employed in the registered mail facility at 36th Street from at least January, 1966, until the time he was suspended, there shouldn't be any issue on that.

MR. FELDMAN: He was employed on different days. He was employed in the 36th Street facility for 12 years and the years involved are from 1966 through 1969, and there is no question that he was employed in the facility during those three years.

The question arises whether he was employed on a particular day.

THE COURT: I understand.

MR. FELDMAN: The Post Office has decided or has chosen a day that the package or the mail would have arrived at the 36th Street facility --

THE COURT: All right. I get your point.

Saving the question of the particular work days

or hours when Mr. Stephens was actually there, can you stipulate -- I think you have already said -- that in general he was employed from on or before January, 1966, up until the time of the arrest at the registered mail facility at 36th Street, is that right?

MR. FELDMAN: That's correct, yes.

THE COURT: Then as to -- like everybody, we don't work 24 hours a day, seven days a week, so there were times he was there and times he was not, right?

MR. FELDMAN: Right.

THE COURT: And to the extent it is relevant, we can have specific records or evidence about days or hours. Okay.

What does tour 1 mean?

THE WITNESS: Tour 1 means, in the Post Office, in most facilities, tour 1 is from midnight to 8 A.M., tour 2 from 8 A.M. to 4 P.M. and tour 3 from 4 P.M. to midnight.

THE COURT: Okay, go ahead, Mr. Wilson.

Q Inspector Jones, did you examine any time records to determine whether or not Mr. Stephens was working on the particular day in question?

THE COURT: January 26, 1966, is the date referred to in Exhibit 1.

Q Did you check any time records to determine

whether Mr. Stephens worked on that particular date or on any dates at approximately that time?

A In my own mind, yes. However, I would state that the time cards that I was able to recover from the Post Office only go back until 1967.

At the time I was determining the losses chargeable that I felt were chargeable under the Boerner decision, I would not have charged any loss had I not been able to find some record which would show whether Mr. Stephens did or did not work on the 26th, the 27th --

THE COURT: We have to take it one step at a time. I take it you do not have time records for January 26, 1966, in court.

MR. WILSON: We do not, your Honor.

THE COURT: Do you have a specific memory of any time looking at time records for January 26, 1966, for Mr. Stephens?

THE WITNESS: No, sir.

THE COURT: I don't think we need to strain at this. I am not just going to take an assumption from him. I won't give weight to that.

Let's go on to something else, all right?

MR. WILSON: I think we should proceed to what I think is Exhibit 2.

THE COURT: Let me ask you this:

All of these are items of registered mail, right?

THE WITNESS: Yes, your Honor.

THE COURT: Give me a minute, please, to look at Exhibit 2.

(Pause)

THE COURT: On Exhibit 2 there is a report of August 23, 1968, about the path or route of the package and it says, "The register was enclosed and forwarded to Murray Hill Station where delivery was effected."

Is 36th Street the Murray Hill Station?

Can you just answer my question? When a report speaks of the Murray Hill Station, is that the same as 36th Street?

THE WITNESS: There are two facilities. They were referred to as two Post Offices, but I'm --

THE COURT: Where in this Exhibit 2 is there any indication that --

MR. FELDMAN: Excuse me, which exhibit are you talking about?

THE COURT: I am talking about Exhibit 2 and I am talking about the last report, the report of August 23rd.

MR. FELDMAN: Which paragraph?

THE COURT: Paragraph 2. This is a little

cryptic to me, if you don't mind, and I would like to know if you could explain the language so that I can understand the meaning of the document, how it involves the 36th Street facility.

I see the word there, but I don't understand the context.

MR. WILSON: Your Honor, could the witness refer to your copy of the exhibit because our other copies are too light to look at?

THE COURT: All right, you refer to this (handing).

(Pause)

THE COURT: Paragraph 2 of the report says, "It has been determined that register 15265 was signed out to the carrier for delivery at the 36th Street facility on June 6, 1967."

I understand that.

Another form indicates that the carrier was cleared for registered piece at 10:15 P.M. by clerk Stephens.

Okay, I understand that.

Then it says that the piece in question was forwarded.

Where was it forwarded? I mean, did it go to Grand Central Station or what?

THE WITNESS: Based on this report, the article-- it was given to the carrier for delivery, he returned it to the station and clerk Stephens cleared him for this registered piece, which means --

THE COURT: Which means he took it?

THE WITNESS: Which means it was back in the registry section.

THE COURT: And the date was what?

THE WITNESS: June 6, 1967.

The next sentence says, "The piece in question was forwarded on Form 3849 indicating the piece was forwarded and showing the forwarding address of 999 Park Avenue and was filed at Grand Central Station."

THE COURT: What does all that mean? I am not too worried about pieces of paper being filed.

Where did the article go according to that report? Did it go to Grand Central, or can't you tell?

THE WITNESS: I can't tell from this report, your Honor.

THE COURT: What is the course of the article as far as you can tell according to that report after Mr. Stephens received it? What happened to the article?

THE WITNESS: All right. The article was subsequently -- paragraph 3, the article was discovered in the

registry section at the 36th Street facility on June 6th by clerks Papa, Olivetto and foreman H. Nelson.

THE COURT: In what condition?

THE WITNESS: Without contents and the box had been split.

THE COURT: All right. Let me see that again.

THE WITNESS: Then I think this is what clears here, "The register was enclosed and forwarded to Murray Hill Station," which would be the delivery station for that Park Avenue address, the forwarding address.

THE COURT: All right, you picked out the relevant portions. Thank you.

(Pause)

THE COURT: Wait a minute. What is there in the third paragraph that indicates the discovery without contents was at 36th Street? That is what got me confused.

It does not say 36th Street. How do you know it was discovered at 36th Street rather than Grand Central Station or Murray Hill?

THE WITNESS: My knowledge is based on the fact that foreman Nelson was the registry foreman in the facility at 36th Street and clerks Olivetto and Papa also worked in the registry section at the 36th Street facility.

THE COURT: All right.

THE WITNESS: I believe there is a typographical error on this form when he says 10 P.M. was when clerk Stephens cleared the carrier. I think it should be 10 A.M., because no carrier is out delivering mail at 10 P.M. at night.

THE COURT: All right. Thank you very much.

Do you have any more questions on Exhibit 2?

MR. WILSON: No, your Honor.

THE COURT: All right. Let us take Exhibit 3.

(Pause)

Q Inspector Jones, other than the report of Thomas Zurich, dated December 17, 1968, what evidence or documents did you rely upon in charging this particular loss, registry number 192139, to Mr. Stephens?

A In this particular instance, a registry dispatch was made from the 36th Street facility to Grand Central Station and I cannot recall the date without looking at data which is in the within exhibit --

THE COURT: Here, take the exhibit (handing).

A On December 2, 1967, a dispatch was made from the 36th Street facility to Grand Central Station --

THE COURT: What is the date?

THE WITNESS: December 3, 1967.

A It consisted of two rotary locked pouches and they are bills number 279 and 280. The two manifold bills

indicated the pouches were dispatched by clerk J.S. Stephens at 2 P.M.

The bills also indicate the pouches were receipted for at Grand Central Station at 2:35 P.M. by a clerk Pough, and there is nothing on the bills to indicate there was any discrepancy in the rotary lock numbers.

A memorandum was furnished me or obtained from the operations manager at Grand Central Station. This memorandum is dated December 5, 1967, and is signed by the clerk Della Pough, wherein she reports that on December 2nd she opened the two rotary pouches from the 36th Street facility and discovered a loose envelope in the mail which was addressed to Louis Franklin, 665 Fifth Avenue which contained gold cufflinks.

THE COURT: Addressed to whom?

THE WITNESS: Louis Franklin, 665 Fifth Avenue.

THE COURT: And it was supposed to -- did it contain or was --

THE WITNESS: It did contain gold cufflinks.

THE COURT: Was anything missing from that envelope?

THE WITNESS: Not from the envelope. However, in referring to Inspector Zurick's report and the Form 565, it is indicated that this envelope with the gold cufflinks

was a part of the articles dispatched in register 192139 on November 30, 1967, from a firm in Columbus, Ohio, to Louis Franklin Company, New York. In fact--

THE COURT: In other words, the envelope was a part of a larger registered package?

THE WITNESS: Yes, sir.

THE COURT: And what were the contents? Were there missing contents? What about that larger package, was it ever found or what?

THE WITNESS: No, sir, but the addressee was contacted and advised a shipment in addition to the gold cufflinks contained seven pair of 18 carat diamond ear clips.

THE COURT: Was that all that was lost from 192139?

THE WITNESS: Yes, based on --

THE COURT: I can't read that very well.

What was the amount of the claim paid?

THE WITNESS: It appears to me to be $[illegible]9, but I cannot make it out, either.

THE COURT: Can anybody make it out?

MR. WILSON: Your Honor, we have the original.

What is the number of it again?

THE COURT: That was 192139.

MR. WILSON: The original shows that the amount to be paid was $759.03.

THE COURT: When was it paid? Isn't that an approval form?

MR. WILSON: Yes, it is.

THE COURT: What is the date of that form?

MR. WILSON: The date is July 16, 1969.

THE COURT: Who was it paid to or to be paid to?

MR. WILSON: The payee's name is listed as Argo and Lehne, 84 North High Street, Columbus, Ohio, zip code 43215. The value of the item was designated as $1,000.

THE COURT: That finishes Exhibit 3.

Exhibit 4. Let me look at that for just a minute.

(Pause)

THE COURT: I tell you what, it helped me on the last one to just give me the relevant facts from the report, Mr. Jones, so why don't you just do this for Exhibit 4.

I don't think there is any objection. I just have a little trouble interpreting the nomenclature.

What is the part of the report that shows the connection with Mr. Stephens or the 36th Street Station?

THE WITNESS: Paragraph 2 of the report indicates that the register was--

THE COURT: You mean the package, right?

THE WITNESS: The package, yes, sir.

THE COURT: Okay.

THE WITNESS: Was dispatched from the General Post Office, New York, New York, to the 36th Street facility and that it was received --

THE COURT: On what date?

THE WITNESS: On June 25, 1968.

THE COURT: Give me a minute. I have got to go back to Exhibit 3.

What was the date on that? When was the date in Exhibit 3 when the pouches were dispatched from 36th Street?

THE WITNESS: December 2, 1967.

THE COURT: I will take Exhibit 3 back. You go ahead with Exhibit 4.

THE WITNESS: All right. Again referring to paragraph 2, the inspector's report indicates that this article was received at the General Post Office and that there is no record there of bad condition.

THE COURT: You said it was dispatched to the 36th Street Station. Then what?

THE WITNESS: On June 26th.

THE COURT: Right.

THE WITNESS: Some time between 6 and 6:30 A.M., and it further indicates the opening clerk, and the P. Olivetto, reported the register was received with the bottom

three sides slit and the register --

THE COURT: Opening clerk where?

THE WITNESS: At the 36th Street facility.

THE COURT: He reported what?

THE WITNESS: The register was received with the bottom three sides slit and the register apparently empty.

THE COURT: You are talking about a package, not a pouch, right?

THE WITNESS: A package.

THE COURT: In what condition?

THE WITNESS: With the bottom three sides slit and the register apparently empty.

THE COURT: It would help me a lot if you would say package instead of register. I don't know--

THE WITNESS: I'm sorry, your Honor. All right, the package apparently empty.

THE COURT: What was missing out of it, according to the records?

THE WITNESS: I have nothing in this file to show what the contents were, your Honor.

THE COURT: Was there a claim paid?

THE WITNESS: Yes, sir.

THE COURT: What was the amount of the claim paid and the date it was approved or paid?

THE WITNESS: It was approved July 16, 1969, but I cannot make out the amount from this copy.

THE COURT: All right. Do you have an original?

MR. WILSON: Yes, your Honor.

The amount, the total amount paid was $888. Payment was made to the Federal Insurance Company, 90 John Street, New York, New York.

THE COURT: All right. Let's go to Exhibit 5--

MR. WILSON: Your Honor, may I question on a few items concerning number 4?

THE COURT: Surely. All right.

Q Mr. Jones, what date did you say the record reflected the transfer of this particular parcel to the 35th Street facility by the GPO registry clerk?

A June 25, 1968.

Q I believe you testified in response to the judge's question June 26, 1968.

A I'm sorry, if I did it is incorrect. It is June 25, 1968.

THE COURT: All right. Anything else?

MR. WILSON: Yes.

Q You used the term opening clerk or the report uses that term. In any case, I think you referred to it -- no, the report says opening clerk.

A Yes.

Q What does that term mean to you or what does it mean in postal service parlance?

A It means that this employee is the one who would have unlocked the pouch and dumped the mail onto the opening table and then made an examination of the mail to verify it against the manifold, in this case 190 pieces total.

Q You have charged Mr. Stephens with having been responsible for the loss of the contents of this parcel, is that correct, Mr. Jones?

A Yes.

Q And yet this report says that it was intact when it left Grand Central Post Office or GPO and that the clerk who opened the pouch found that it was empty when he opened the pouch at the other end of the line, so to speak, when that pouch was next opened at 36th Street, is that correct?

A That's correct.

Q How is it that you have concluded that Mr. Stephens was responsible for this loss? How could that have been?

A I applied the criteria of the Boerner decision under instructions issued to me that, number 1, the piece did arrive at the 36th Street facility; number 2, Mr. Stephens was working on that date; number 3, he would have had access

to this piece of mail; number 4, there were no other employees arrested at the facility for theft of the same type of mail, and in this instance 193 registered pieces would take any individual a period of time to verify which would mean that other people working in the area could have had access to that piece of mail prior to the time Mr. Olivetto got around to check it off against the manifold.

Q Inspector Jones, do you have in your possession any documents which would reflect the contents of this parcel?

THE COURT: Do you know of any?

MR. WILSON: Yes.

THE COURT: He has said he couldn't find it.

A There is no 565. The Form 565 should show the contents, but there is not one with these exhibits.

Q Inspector Jones, do you have the 565 available to you in the courtroom?

A I'm not sure if I have it in my briefcase or not. I could check it.

MR. WILSON: Your Honor, could the witness be excused to check his briefcase?

THE COURT: Let us cover that later. You just make a note. It is not of crucial importance.

Let us go to Exhibit 5.

Can you do the same thing for Exhibit 5? Just explain to me the crucial entries.

THE WITNESS: Yes, sir.

A This report by Postal Inspector C.M. Harm, dated April 4, 1969, indicates that register number 6487 was received at the General Post Office registry section on September 24, 1968, and that it was dispatched to the 36th Street facility at 6 A.M. on September 25, 1968.

It further states there is no indication on Form 3854 to show this register was in damaged condition. The subject register was signed for by registry clerk Simmons at 8:20 A.M. on September 25, 1968. It was charged out on the charge out sheet to wagon number 5, but was not taken out for delivery. Instead, it was marked as being in bad condition by registry clerk Olivetto.

The inspector subsequently visited the addressee, the Reinbro Corporation and from talking with a Miss Ostrov of their claims department, learned that the parcel had been only partially rifled and that it still contained 51 rings when delivered.

An inventory made at the time disclosed 41 rings were missing.

He further states the wrapper was examined and it shows a tear approximately three inches long had been made

on the side of the carton. The tear was covered with paper tape by registry clerk Olivetto.

THE COURT: All right. Was the claim approved?

THE WITNESS: Yes.

THE COURT: What was the amount of that claim?

THE WITNESS: $2,000 on November 6, 1969.

THE COURT: Do you have any questions about that?

MR. WILSON: Yes, your Honor.

THE COURT: Okay.

Who was the claim paid to?

THE WITNESS: T & W Setting Company, P.O. Box 3, Union, New Jersey 07083.

THE COURT: Any questions?

MR. WILSON: I think that I do have one, your Honor.

(Pause)

MR. WILSON: Your Honor, excuse me, I don't have any questions concerning that.

THE COURT: All right. Let's go to Exhibit 6.

You give me the same information.

THE WITNESS: Yes, sir.

A Exhibit 6 contains a memorandum dated December 17, 1968, from the office of the operations manager, Grand Central Station to Inspector G.P. Forster, General Post Office,

New York, New York.

The memorandum states, in part, that registered article number 550191 was listed on a carrier charge out sheet, Form 3867, for the 1 P.M. delivery trip on Wednesday, November 27, 1968. It further states the article was not taken out for delivery but returned by carrier B. Rubin, route number 27, marked "Next trip at 1 P.M."

In parenthesis it states, "The next day is holiday, no scheduled trip. The article did not appear again. There is no record of delivery and the addressee has denied receipt."

THE COURT: Where was the carrier? Was this the 36th Street Station?

THE WITNESS: Yes, sir.

THE COURT: All right. Is that the end of the crucial facts?

THE WITNESS: There is also with the file a Form 3567, a record of registered and certified mail receipt for delivery which does list this piece under the date of November 27, 1968.

THE COURT: Who signed that?

THE WITNESS: I don't know, sir.

THE COURT: Is that a 36th Street form?

THE WITNESS: This is a standard Post Office form.

THE COURT: Is there an indication it was signed at 36th Street?

THE WITNESS: None other than the fact it relates to the memorandum.

THE COURT: What were the articles that had been mailed?

THE WITNESS: The form indicates the parcel contained one diamond and emerald platinum ring valued at $4,375.

THE COURT: Was a claim approved?

THE WITNESS: Yes, sir, in the amount of $1,000, and the form is dated August 15, 1969. It was paid to Elbeard B. Heffern, 407 North 8th Street, St. Louis, Missouri 63101.

THE COURT: Okay.

Do you have any questions on Exhibit 6, Mr. Wilson?

MR. WILSON: Yes, I do, your Honor.

THE COURT: All right.

MR. WILSON: May I just beg the Court's indulgence to go back to Exhibit 5 for one moment.

THE COURT: Sure.

Q I would ask, Inspector Jones, whether or not you checked the time cards of Jesse Stephens to determine what days he was on duty in relation to this particular loss?

A I did verify his time card, and also paragraph 3 of the inspector's report states that clerk Stephens was one of the employees on duty in the registry section on September 25, 1968.

MR. WILSON: Thank you. I have no further questions concerning that exhibit..

THE COURT: Do you have anything on Exhibit 6?

MR. WILSON: Yes, your Honor. I think it is the same question.

Q Yes. Concerning registry number 550191,Exhibit 6, did you check Mr. Stephens' time cards to determine when he worked in relation to this particular loss?

A I checked his time card and found he was on duty on November 7, 1968.

THE COURT: All right. Now let us go to Exhibit 7. The same questions.

A Exhibit 7, all I have is a Form 504, which was definitely not my basis for charging this.

MR. FELDMAN: Excuse me, I didn't catch that.

THE WITNESS: All I have here is the Form 504 which could definitely not have been my basis for charging this registered piece to Mr. Stephens.

THE COURT: What do we need?

MR. WILSON: We need an additional exhibit, your

Honor.

Q Mr. Jones, I show you a Xerox copy of a Form 565.

THE COURT: That was not agreed to be admitted?

MR. WILSON: It was not. Actually, I don't think I took it up with counsel. If your Honor wishes, I will propose it to counsel and see if there is any objection.

THE COURT: Yes.

I think you may have a bunch of these where all you got are the Forms 504. 8, 9 and 10 are nothing but Forms 504.

11 I know there are some additional forms that haven't been agreed to, but aren't there some additional forms that can be agreed to on 8, 9 and 10?

MR. FELDMAN: I am not sure there are any real additional forms.

THE COURT: All right.

Anyway, what about 7?

MR. FELDMAN: Most of the information is summarized on the 504 form.

THE COURT: Okay, if it is, fine.

MR. FELDMAN: That is why we have eliminated many of the other forms.

THE COURT: All right.

A This Form 504 shows a registered number 2580 was

mailed on December 5, 1968.

THE COURT: What connection with 36th Street or Mr. Stephens?

THE WITNESS: It is not shown on this form. This is why I need the 565.

Q Does that show the addressee? Does that form you have in your hand show the addressee?

A I believe this shows a sender. It is an Alabama address.

MR. FELDMAN: I believe it has the addressee in the upper right-hand corner, Jack Felsonfeld, Inc.

Q Is that correct, Mr. Jones?

A It does show that, but it does not give me any street address or zip code so I couldn't tell from this if it relates to the 36th Street facility.

MR. WILSON: All right. Then at this point I would ask plaintiff's counsel if he has any objection to the admission of the Form 565 relating to this particular registered article.

MR. FELDMAN: No objection.

THE COURT: All right. Let us include that in Exhibit 7, please. We will clip that on.

You take a look at these Exhibits 8, 9 and 10 and see if you don't have the same problem.

I don't know whether you do or don't, but let's see if we need some additional material.

(Pause)

THE COURT: Okay. Can you give me some more information from Exhibit 7 which now includes that new form?

THE WITNESS: Yes.

The Form 565 shows this register was mailed to Jack Felsonfeld, Incorporated, 665 Fifth Avenue, New York, New York 10022. It was mailed on December 5, 1968, that the postmaster at New York, New York indicated his records show no receipt of the article nor does it show that it was delivered.

THE COURT: What is there to connect it with 36th Street?

THE WITNESS: The zip 10022 was the 36th Street facility.

THE COURT: Zip what, 10--

THE WITNESS: 10022 was the zip code for the 36th Street facility at that time.

THE COURT: Are you telling me it was never even received in New York City?

THE WITNESS: No, sir. There is no record of delivery from the 36th Street facility.

THE COURT: But is there a record of a delivery

to the 36th Street facility?

THE WITNESS: Not to my knowledge, no, sir.

THE COURT: Now wait a minute.

What does that Form 565 show? It shows it was not delivered at 665 Fifth Avenue, right?

THE WITNESS: Yes, sir.

The form is signed by somebody from the Postmaster's office for the New York Post Office which states "There are no records at New York showing that the article was delivered.

THE COURT: But you can't tell from that where it disappeared, right?

THE WITNESS: No, sir.

THE COURT: If it disappeared at 36th Streeet or at some other place?

THE WITNESS: No.

THE COURT: Okay.

MR. WILSON: Your Honor, if I may, this is an instance where the government is forced to rely heavily on the theory of the Boerner decision, as you know.

THE COURT: All right. I just want to see what it shows or what it does not as far as the documents.

What I do need to know, was there a claim paid?

THE WITNESS: Yes, sir.

THE COURT: What amount?

THE WITNESS: $700, July 16, 1969. I can't make out from this the payee's name.

THE COURT: All right. Can you make out what the contents were?

THE WITNESS: One string of matched pearls.

The claim was paid to Best Jewelry Company, South Court Street, Florence, Alabama 35630.

THE COURT: All right. Now let's go to Exhibit 8.

What about Stephens? Was Stephens working on-- I don't know whether that is relevant here. We don't know anything about dates very much, do we?

MR. WILSON: Your Honor, we would like to put in evidence of what dates at or about this time Mr. Stephens worked.

THE COURT: All right, you will take care of that.

MR. WILSON: Yes, sir.

THE COURT: Where do we go from here? Do you want to go to Exhibit 8?

MR. WILSON: May I inquire about that particular point so we don't lose track?

THE COURT: Certainly.

MR. WILSON: Your Honor, may I just inquire the registry number of the exhibit we are currently discussing? Is that 7?

THE COURT: 2580.

Q Inspector Jones, did you examine Mr. Stephens' time record in connection with your attempt to determine whether he was responsible for the loss of register 2580?

A Yes, I did.

Q In relation to that date of mailing indicated on the forms, did you determine what dates he worked?

A Yes. Based on the date of mailing December 5th, under normal conditions, that package would have been in New York and at the 36th Street facility on December 6th or December 7, 1968.

I checked Mr. Stephens' time cards and I find he worked on December 7th and on December 9th.

Q Do you know why it is he did not work on December 8th?

A I believe it was a rest day, I believe it was a Sunday.

THE COURT: Okay, let's go on to Exhibit 8.

Do you have any other documents to add to that?

MR. WILSON: Yes, your Honor. To Exhibit 8 the defendant would propose to add, again, the Form 565 relating to that register.

THE COURT: Any objection to that?

MR. FELDMAN: No, your Honor.

THE COURT: All right, we will clip that on. Okay, same questions, Mr. Jones.

THE WITNESS: Register number 50926 was mailed on December 6, 1968, from Louisville, Kentucky, to Cartier Fifth Avenue and 52nd Street, New York, New York 10022. It contained one watch valued at $300.

The Form 565 completed by the New York Post Office reports there is no record of delivery.

The Form 504 indicates that a claim was paid in the amount of $158 to Mr. R.M. Fitzsimmons, 22 Rio Vista, Louisville, Kentucky 40207.

THE COURT: When was the claim approved?

THE WITNESS: July 25, 1969.

THE COURT: Okay. Any questions, Mr. Wilson?

MR. WILSON: Yes, your Honor.

Q Did you check the time records in relation to this particular register, lost register?

A Yes, I did.

It was mailed from Louisville, Kentucky, on November 6, 1968, and under normal procedures would have been at the 36th Street facility on December 7th, 8th or 9th.

Mr. Stephens worked on December 7th and 9th of 1969.

THE COURT: All right. Can you go to Exhibit 9? Do you have a document to add to that?

MR. WILSON: I believe I do, your Honor.

I'm sorry, referring back to Exhibit 8 I would just like to ask Mr. Jones if he determined why Mr. Stephens was absent from work on December 8th.

THE COURT: We have already covered that, didn't we?

THE WITNESS: That was the prior one, but that was the same thing. December 8th, I believe, was a Sunday and a rest day.

MR. WILSON: You are correct, your Honor.

THE COURT: All right. Exhibit 9, do we add a document there?

MR. WILSON: Yes, your Honor, if you will bear with me a moment. I have to locate it.

In regard to register 265751, the government would propose to add to Exhibit 9 a Xerox copy of the Form 1510 entitled "Inquiry for the loss or rifling of mail matter" relating to that register.

THE COURT: All right. See if that is agreed to.

MR. FELDMAN: No objection, your Honor.

THE COURT: No objection. All right, received. We will stick that on, also.

All right, same questions, Mr. Jones.

THE WITNESS: P.O.D. Form 1510 indicates that registered article number 265751 was mailed on January 16, 1969, to David Webb, 7 East 57th Street, New York, New York.

The form also indicates that there is no record--

THE COURT: I'm sorry, I was not with you. Just go over it. Mailed when to where?

THE WITNESS: Mailed January 16, 1969, from Beverly Hills, California.

THE COURT: To what address?

THE WITNESS: David Webb, 7 East 57th Street, New York, New York.

THE COURT: Zip code?

THE WITNESS: The zip code is not shown on the form, your Honor.

THE COURT: What would that be?

THE WITNESS: That is 10022.

THE COURT: And no delivery?

THE WITNESS: The form was completed by the New York Post Office on March 27, 1969, and it indicates the addressee has not received the article, that there is no record at the New York Post Office relative to this article.

THE COURT: Okay.

THE WITNESS: It also shows the value.

THE COURT: What was the item?

THE WITNESS: Five pieces platim diamond is the way it is shown here and it shows a value of $100.

The Form 504--

THE COURT: Was the claim paid?

THE WITNESS: Yes, sir.

THE COURT: How much?

THE WITNESS: $100.

THE COURT: When was it approved?

THE WITNESS: August 18, 1969.

THE COURT: Again, I imagine you want to -- have you checked the time records?

THE WITNESS: Yes, sir. This parcel was mailed January 16, 1969, and would normally have been at the facility on January 17, 1969.

Mr. Stephens worked on January 18, 1969.

THE COURT: It would normally have been there on the 17th?

THE WITNESS: The 17th or 18th. The 17th would have been the earliest possible date.

THE COURT: Okay. Anything else on Exhibit 9?

Who was the claim paid to?

THE WITNESS: Mrs. Tom May, Beverly Hilton Hotel.

THE COURT: That is shown on the record.

All right, next. Exhibit 10, do you have something to add there?

MR. WILSON: I may, your Honor.

May I just address a question or two to Mr. Jones on Exhibit 9?

THE COURT: Oh, sure, of course.

Q Mr. Jones, you have told us that the 504 form reflects that $100 was paid on that claim.

A That's correct.

Q What was the actual value of the parcel as reflected in that same form?

A $79,150.

Q Why is it, if you can determine that form, that the postal service only paid $100 for that loss?

A I have to assume that the sender declared a value of $100 at the time of mailing, and the form also indicates that it was commercially insured, which is a common practice with many people. They will declare a minimum value to get it in the registered channels, particularly if they had commercial insurance on it.

MR. WILSON: I have no further questions on that one, your Honor.

THE COURT: All right. Now Exhibit 10.

MR. WILSON: At this time the defendant would

propose to add to the items currently marked as Exhibit 10 in evidence a 1505 form relating to register number also 94281, which is the same number that the registry form indicates.

THE COURT: Any objection?

MR. FELDMAN: No objection.

THE COURT: All right. Let us add that to the exhibit.

All right, Mr. Jones, same questions.

THE WITNESS: This is a Form 1510 which indicates that registered article number 94281 was mailed on February 13, 1969, from Minneapolis, Minnesota, to Morris Tishman, 665 Fifth Avenue, New York, New York 10022.

The form was completed at the Post Office of address on April 3, 1969, and indicates the addressee has not received the article and there is no record at the New York Post Office relative to this article.

The Form 504 indicates that a claim was paid in the amount of $500 on August 25, 1969, to J.B. Hudson Company, 8th Street and Nicholette Mall, Minneapolis, Minnesota 55402.

THE COURT: What was the article?

THE WITNESS: One platinum ring with six diamonds, 50 hundredths per carat, one old cut diamond approximately

one and one-half carats.

THE COURT: What about the employment dates?

THE WITNESS: This article was mailed on February 13, 1969. Under normal handling it would have been at the 36th Streeet facility on the 14th or 15th.

Mr. Stephen's time cards reflect that he worked on February 15th and 17th, 1969.

THE COURT: Okay. Anything else?

MR. WILSON: Yes, your Honor.

MR. FELDMAN: Excuse me, could you repeat the dates. It was mailed on February 13th and when would it normally have reached 36th Street?

THE WITNESS: It was mailed on February 13th and normally, under normal conditions, would have been at the facility on the 14th or 15th of February, 1969.

MR. FELDMAN: 14th and 15th?

THE WITNESS: 14th or 15th.

MR. FELDMAN: 14th or 15th. Thank you.

Q Inspector Jones, from the reports that you have before you, the documents you have before you, can you determine what the contents of this parcel were?

A Yes.

THE COURT: He has already given us that. It is a diamond ring.

MR. WILSON: I'm sorry, I missed that, your Honor.

THE COURT: Okay.

Q Did you, in your investigation of this particular loss, locate any other evidence beyond those documents that are marked as Exhibit 10?

A Yes.

Q And can you tell us what other material you located in connection with this particular registry loss?

A A foreman at the 36th Street facility turned over to either I or one of the special investigators working for me, and I can't tell you who, a rifled wrapped, and an examination of that wrapper indicates that one piece bears the register number 94281. One part of the wrapper was found in the waste basket, I believe, in a lunch room and the remaining parts in a waste basket in the toilet or locker room, I don't recall which.

Q I show you some pieces of cardboard contained by a rubberband, and ask you if you can identify what that is.

A One is a small piece of cardboard which bears a rubber stamped--

THE COURT: Are these the pieces of cardboard you just referred to?

THE WITNESS: Yes, sir.

THE COURT: Are they marked with a number?

MR. WILSON: I haven't yet designated them yet as an exhibit.

THE COURT: Do you want to mark them as 10-A and B or something like that?

MR. WILSON: Yes, I think that would be fine.

(Defendants' Exhibits 10-A and 10-B, respectively, were marked for identification.)

THE COURT: Do you offer these, Mr. Wilson?

MR. WILSON: I had one or two more questions for Mr. Jones, but I will be offering them,yes.

THE COURT: All right.

MR. FELDMAN: I have no objection.

THE COURT: All right. We will receive those.

(Defendants' Exhibits 10-A, and 10-B received in evidence.)

Q Do you know where these were found, where in the 36th Street facility they were found?

THE COURT: He has just said.

Anything else?

Q Does the cardboard wrapping bear the name of a company or other indication of ownership?

A There is a label pasted on the bottom of the parcel which has the name J.B. Hudson Company printed on it.

There is a rubber Post Office stamp over a portion of this label which indicates the parcel was mailed at Minneapolis, Minnesota, on February 13, 1969. This is on Exhibit 10-B.

Portions of this wrapper also bear evidence that they were cut with a sharp instrument.

10-A bears the register number--

THE COURT: You already told us that. Okay. Let us go.

Can we go to Exhibit 11?

Here apparently you got some controversy about documents, so what do you want to do on this phase, Mr. Wilson?

How much more do we have in the case? Are you about ready to rest?

MR. WILSON: As far as Mr. Jones is concerned, yes.

I have one other witness who will testify.

THE COURT: For how long?

MR. WILSON: I would say about ten minutes.

THE COURT: What is your plan as far as cross-examination or your affirmative case, Mr. Feldman?

MR. FELDMAN: Well, I, of course, would like to cross-examine Inspector Jones, but I am not sure what time

the court recesses here. I would like to conduct the cross-examination on one day so there can be continuity.

The only witness that I have is Mr. Stephens.

THE COURT: Will Mr. Stephens testify?

MR. FELDMAN: Yes, yes. His testimony, I expect, will not take up much time, the direct.

THE COURT: Okay.

Could you estimate how long your cross-examination of Mr. Jones would take?

MR. FELDMAN: I would say an hour or two.

THE COURT: We just can't do all that tonight.

I had hoped to finish the trial today, but obviously you have a right to cross-examine.

I don't understand why it would take an hour or two. What is there to cross-examine Mr. Jones about?

MR. FELDMAN: First I would like to go over these exhibits, because while I have seen them all before, the Court has the only complete copy of the exhibits and some of the copies that I have contain items that are not in evidence and it might be confusing on cross-examination.

THE COURT: All he has really given us is the skeleton of the exhibits. He has just helped me understand the exhibits and is basically not testifying, except on the basis of these exhibits and the time records.

MR. FELDMAN: One of the things --

THE COURT: I just don't understand. In other words, what is your position?

MR. FELDMAN: One of the things I would like to cross-examine him on is the general procedure that the Post Office follows in handling registered mail.

THE COURT: Well, that does not take an hour or two.

MR. FELDMAN: It is very hard for me, your Honor, to predict how long my cross-examination will take.

I don't want to give the Court a low time figure and then be compelled to shorten it.

THE COURT: Let us take a short recess at this point.

(Recess)

THE COURT: Okay, Mr. Jones, why don't you resume the stand and let us finish your direct.

DIRECT EXAMINATION CONTINUED

BY MR. WILSON:

Q Inspector Jones, other than what is now marked as Exhibit 11 in evidence, did you have any other basis for charging the loss of register number 1120 or registered package number 1120 to Mr. Stephens?

A Yes.

Number 1, I didn't have this form at the time and, number 2, the wrapper of a parcel was recovered at the 36th Street facility in a rifled condition and affixed to that parcel was a return receipt indicating that the parcel was number 1120.

THE COURT: Do you have that?

MR. WILSON: Yes, I do, your Honor. I was just trying to figure the marking on it.

THE COURT: It will be 11-A.

(Defendants' Exhibit 11-A marked for identification.)

xx

Q I show you what is now marked Defendants' Exhibit 11-A for identification, and ask if you can identify that item.

A This is a portion of the wrapper --

THE COURT: Is this the wrapper that you referred to a minute ago?

THE WITNESS: Yes, sir.

THE COURT: All right. Are you offering it, Mr. Wilson?

MR. WILSON: I will in conjunction with two other documents, your Honor.

THE COURT: All right.

Q I show you a piece of paper bearing handwritten

writing and tagged as Exhibit 11-B for identification, and ask if you can identify that document (handing).

A This is a handwritten memorandum prepared or submitted by clerk Alphonse Papa. It is dated March 11, 1969. It is addressed to Mr. I. Welsher, Superintendent. In the memorandum --

THE COURT: Don't say that. It has not been received yet.

Do you have anything else to mark?

MR. WILSON: Yes, your Honor.

Q I show you a letterhead bearing the letterhead United States Post Office and handwritten writing identified as Exhibit 11-C for identification, and ask you if you can identify that document (handing).

A Yes. This is a memorandum from Mr. Henry C. Nelson, foreman of registry, to Mr. S.L. Andrews, acting operations manager, 36th Street facility, dated March 11, 1969.

Q Did you provide both of those documents to me on a prior occasion, to me as defense counsel in this matter?

A Yes, sir.

THE COURT: Are you going to offer all these?

MR. WILSON: I will be, your Honor. I just want to lay the foundation.

Q How did you come into possession of those two

documents?

Let me address myself, how did you come into possession of all of the three items 11-A, B and C?

A The exact means of them coming into my possession I cannot recall.

Under normal conditions, items like this relating to rifled registered mail would be referred to me by the superintendent at the facility.

Q Is that in your capacity as the --

A As the inspector having the depredation assignment for that area, yes.

MR. WILSON: At this time the defendant offers in evidence Exhibits 11-A, B and C.

THE COURT: Any objection?

MR. FELDMAN: I have no objection on Exhibit 11-A, but I do on Exhibits 11-B and C.

THE COURT: May I see Exhibits 11-B and 11-C.

11-A is received.

xx (Defendants' Exhibit 11-A received in evidence.)

THE COURT: I will receive 11-B.

I will sustain the objection to 11-C.

xx (Defendants' Exhibit 11-B received in evidence.)

THE COURT: Can you give me the information on 1120?

THE WITNESS: This statement from clerk Papa indicates that --

THE COURT: Clerk Papa was at 36th Street, right?

THE WITNESS: Yes, sir.

THE COURT: What about the relevant dates, the date of mailing and so forth?

THE WITNESS: The memorandum is dated March 11, 1969, and he states that, "Please be advised of the"--

THE COURT: I have read it.

Do you know anything about the mailing date? Can you look at the 504 or anything like that?

THE WITNESS: March 5, 1969.

THE COURT: The date of mailing?

THE WITNESS: Yes, sir.

THE COURT: From where?

THE WITNESS: I would have to have the 565.

THE COURT: Do you have the 565?

THE WITNESS: It was some place in Pennsylvania, but I can't make it out from this 504.

THE COURT: Where was it mailed to?

THE WITNESS: That is not shown on this form.

THE COURT: Do you know anything about the contents?

THE WITNESS: Not from what I have in front of me, no, sir.

THE COURT: Was a claim paid?

THE WITNESS: Yes, sir.

THE COURT: What amount?

THE WITNESS: That I would have to refer to the original 504 for the amount paid.

MR. WILSON: Just a moment, your Honor.

If your Honor will bear with us, I think the witness can answer most of the questions you have asked from the original.

THE COURT: From the original of the 504?

MR. WILSON: Yes, sir.

THE COURT: Which is the same as Exhibit 11?

MR. WILSON: Yes, your Honor.

THE COURT: Okay.

THE WITNESS: It was mailed by Ramball jewelry store, 129 West 4th Street, Bethlehem, Pennsylvania, and it was going to Cyril Modeshu, 550 Fifth Avenue, New York, New York.

A claim was paid on this in the amount of $1,000 on July 29, 1969.

MR. FELDMAN: Is the 565 in evidence?

MR. WILSON: No, this is the 504 I showed you.

THE COURT: He is not referring to any 565. Do you know what the contents were?

THE WITNESS: No, sir, not from this.

THE COURT: Okay.

And the date, again, of the memo of Mr. Papa?

THE WITNESS: March 11, 1969.

THE COURT: All right. Anything more on this claim for 1120?

MR. WILSON: Yes, your Honor.

Plaintiff's counsel has been kind enough to provide a copy of the 565 form relating to this.

THE COURT: Can you put that in Exhibit 11?

MR. WILSON: Defendant would like to do that.

MR. FELDMAN: No objection.

THE COURT: All right, let's do that.

All right. Can you give me any more information from that form?

THE WITNESS: This form shows the contents was one diamond engagement ring, one diamond wedding, I assume, ring.

THE COURT: I think we about have it on that claim, don't we?

MR. WILSON: Yes, sir.

MR. FELDMAN: Excuse me. Can you just repeat the address of the addressee? I don't think it is the same as--

THE COURT: 550 Fifth Avenue. Isn't that it?

THE WITNESS: This shows 580 Fifth Avenue.

MR. FELDMAN: And the zip code?

THE WITNESS: The zip code is 10036.

MR. FELDMAN: Thank you. 580.

THE WITNESS: The Form 504 shows the address as 550 Fifth Avenue.

MR. FELDMAN: Would that be the same zip code?

THE WITNESS: No, I believe that is zip 22.

THE COURT: All right. Anything else?

MR. WILSON: I have lost track, your Honor. The only question I have in mind is whether or not Mr. Jones checked the time cards to determine it.

THE COURT: I think that is the only thing that has not been covered on this.

A The notes I have in front of me shows that I checked and Stephens was on duty, but I cannot -- for that particular case, I did not record the actual dates. I would have to refer to the time cards themselves.

MR. WILSON: Your Honor, I would request that the witness be allowed to examine the time cards.

THE COURT: Surely.

Can you check that quickly?

THE WITNESS: Yes, sir.

(Pause)

THE COURT: I don't, I don't want to go more than about another 15 minutes now, but I have another trial tomorrow but it isn't starting until 11 so we could have about an hour or so on this, maybe an hour and a quarter.

I think if you, Mr. Feldman, overnight, take these exhibits if you want to and figure out what you want to cross-examine Mr. Jones about and examine Mr. Stephens about, I think that would help you organize all that, right?

MR. FELDMAN: Yes, sir, it would, your Honor.

THE COURT: Okay.

Maybe we can put the other government witness on. You said it would be about ten minutes. We could do that and adjourn about a quarter to 6.

MR. WILSON: I would appreciate that. That witness will be unavailable tomorrow.

THE COURT: Let us see. If you can cut it short, we can see whether Mr. Feldman has any cross of that witness.

MR. WILSON: All right. I only have one more question for Mr. Jones beyond this one.

THE COURT: Let's ask that one.

THE WITNESS: Do you want the data on the time card?

Q Yes, sir.

A The time cards show that Mr. Stephens worked on March 11th, 12th and 13th, 1969.

THE COURT: All right. If you can step down, we will let the other witness testify and you will be subject to cross-examination tomorrow. You can be here at a quarter to 10.

MR. WILSON: Your Honor, I have one more question beyond that time card question.

THE COURT: All right, I'm sorry.

Q Mr. Jones, subsequent to the arrest of Mr. Stephens, did he cease to work in the registry section?

A Yes.

Q And what was the loss experience of the 36th Street registry section following Mr. Stephens ceasing to work in that section?

A From that time until I ceased that assignment in September of 1971, there were no losses, registry losses that came to my attention.

Before I went to the Bronx to furnish a deposition in October of 1974 to Mr. Feldman, I checked with special investigator Sam Barda, who is still on that assignment, and he reported that he --

MR. FELDMAN: Objection.

THE COURT: Yes. I don't think I can take what Sam Barda told him, can I?

Wait a minute. Let's get this. You worked in that

area until what date?

THE WITNESS: September -- the month of September, 1971 -- I'm sorry, 1970, your Honor.

MR. FELDMAN: 1970?

THE WITNESS: 1970.

I was there from the beginning of 1969 until September, 1970.

THE COURT: And no further losses after the arrest of the plaintiff, right?

THE WITNESS: No, sir.

THE COURT: Okay. Anything else?

MR. WILSON: I would like to get clear.

Q Mr. Jones, when did you change assignments or cease that assignment?

A I'm sure it was 1970. I was there approximately two years; from the year 1969 until September, 1970.

MR. WILSON: Okay, thank you.

THE COURT: You will be back tomorrow at a quarter to 10.

Let's have the other government witness.

(Witness temporarily excused.)

G E O R G E M O F F A, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Moffa, where are you currently employed?

A U.S. Postal Service.

Q And at what location do you work for the postal service?

A I'm at Grand Central Station.

Q And what is your job title?

A Regular clerk.

Q How long have you been employed by the postal service?

A Since January, 1950.

Q Have you had any connection with the postal inspection service from time to time?

A Yes; I have.

Q And what has that connection been?

A I have been into lookout galleries or observation posts.

Q Is that at the request of postal inspectors?

A Right, right.

Q Did you know Inspector Jones in 1969?

A Yes, I did.

Q Did you from time to time work in lookout galleries at Inspector Jones' request during 1969?

A Yes, I did.

Q Did you ever make observations in the 36th Street facility from the lookout galleries?

THE COURT: Are you going to talk about dozens of incidents or one?

MR. WILSON: One, your Honor.

THE COURT: Get to that one. You can give him that date and ask him what he did.

Q Did you on March 15, 1969, make observations from the lookout gallery at the 36th Street facility?

A Yes, I did.

Q And what was the purpose of those observations?

A We were supposed to check the registry section at 36th Street.

THE COURT: What did you see?

THE WITNESS: We saw -- well, we were in there at approximately 5:30 in the morning observing the registry section.

At approximately 8:30 or so I saw and my partner, Mr. Parisi, saw Mr. Stephens take two parcels over to the dispatch desk and put them in the drawer. One was a small parcel, the other one is what we call a jiffy bag, which is an insulated envelope.

At approximately I would say 9 A.M., he took this

small parcel and placed it in the bag that was hanging by the dispatch desk.

A short time later he went into the bag with both hands and I saw body movement and when he did come out the parcel was open.

He then tied it with twine and showed it to a Mr. Beck. He entered it into a little book and Mr. Beck, who was a regular clerk there, also signed this book, and then later foreman Nelson also signed the book.

At approximately 10:30 A.M., he put the jiffy bag into this same pouch and went in with both hands again and when he came out the jiffy bag was open.

He then stapled the ends of this jiffy bag and placed them in the proper place where it was supposed to be dispatched, which I believe was route 27.

Q Have you heard Inspector Jones' testimony concerning the location of the lookout gallery in relation to the registry section?

A Yes.

Q Do you agree with his description of the distance between persons in the lookout gallery and persons in the registry section?

A I would say 15 to 20 feet.

Q Did you make all your observations with the naked

eye?

A No, we had binoculars.

Q Were you alone in the lookout gallery on March 15th?

A No, I was not.

Q Who was with you?

A Mr. Daniel Parisi.

Q Is Mr. Parisi also a postal service employee?

A Yes, he is.

Q Have you worked with Mr. Parisi on a number of occasions?

A Yes.

THE COURT: What difference does that make? Mr. Parisi isn't testifying.

MR. WILSON: It will make a difference in a minute, your Honor.

THE COURT: Okay.

MR. WILSON: I am completely at sea as to what exhibit number we are now up to.

THE COURT: Mark it 50. Just pick one.

You pre-marked a lot of exhibits. I don't know what you are up to.

MR. WILSON: This is 15, but --

THE COURT: We can pick a number out of the air. Make it 50 or anything. Let's get going.

MR. WILSON: All right.

Q I show you what has previously been marked as Defendants' Exhibit 15 for identification, a single sheet of paper bearing writing, and ask you if you can identify that document (handing).

A Yes, I can.

Q Can you tell us what it is?

A Well, these were notes written by Mr. Parisi in my presence.

Q And what do those notes relate to?

A The testimony I just gave of what happened that morning.

Q Did you turn those notes over to Inspector Jones?

A Yes, we did.

Q Do you recall the address -- strike that.

THE COURT: Who wrote Exhibit 15?

THE WITNESS: Mr. Parisi.

THE COURT: Anything else?

MR. WILSON: Yes, your Honor. I have two exhibits, as soon as I can locate them.

Q I show you what has previously been marked as Government's Exhibit 17 for identification, and ask whether you can identify this envelope (handing).

A According to the notes that we have, this is one

of the-- this is the jiffy bag that I mentioned earlier.

Q Did you see that bag in an unopened condition?

A Yes.

Q And did you see --

THE COURT: He has already testified. I don't need to have repetition. He has described what he saw about the jiffy bag.

Is this the jiffy bag that you observed?

THE WITNESS: Yes.

THE COURT: Okay. Are you offering it?

MR. WILSON: Yes, your Honor.

THE COURT: Any objection?

MR. FELDMAN: I have no objection.

THE COURT: All right. Exhibit 17 is received.

xx (Defendants' Exhibit 17 received in evidence.)

Q Mr. Moffa, referring to what has been marked as Government's Exhibit 16 for identification, can you identify that package?

A Yes, I can. According to my notes, this was the parcel that he had put in the desk earlier.

Q Can you tell us whom that parcel is addressed to?

A Addressed to a Udmars Piguet & Company, 665 Fifth Avenue, New York, New York 10022.

Q Did you see Mr. Stephens take anything out of this

package?

A No.

Q Did you see him take anything out of Government's Exhibit 17 for identification?

A No, I did not.

MR. FELDMAN: What was the answer to that question?

THE WITNESS: No, I did not.

MR. WILSON: The defendant offers Exhibit 16 for identification in evidence.

THE COURT: All right. Any objection?

MR. FELDMAN: No objection, your Honor.

THE COURT: All right. Received.

xx (Defendants' Exhibit 16 received in evidence.)

MR. WILSON: No further questions, your Honor.

THE COURT: All right, cross.

CROSS-EXAMINATION

BY MR. FELDMAN:

Q What was the condition of Exhibit 16 when you observed Mr. Stephens handling it?

A From my observation, it was intact.

Q It was intact?

A Yes.

Q Can you tell us where Exhibit 16 was mailed from and when it was mailed?

A This says Savannah, Georgia, March 13th.

Q 19 what?

A 1969.

Q What is the next postmark on that package, the next date?

A I don't see any. I see one February 19, 1969.

Q So the next postmark appearing would be February 19, 1969--

THE COURT: Wait a minute.

When was it mailed from Savannah?

THE WITNESS: March 13th.

THE COURT: And it has a postmark of February 19th?

MR. FELDMAN: 1969. That's correct.

Q Can you tell us where this postmark of February 19th appears on the package?

A On the side panel.

Q It appears under the wrapping material?

THE COURT: I tell you, I think we have gone about as late as we can.

Do you have much more?

MR. FELDMAN: Just a couple of minutes, your Honor.

THE COURT: All right, we will finish.

Q Wouldn't that indicate to you that that package was tampered with somewhere on February 19th, 1969, because

the postmark appears under the wrapping material?

A No, not really. This box could have been used before and rewrapped and covered with paper.

Q But you don't know that?

A I don't know that for a fact,no.

Q Is there any postmark on this package which indicates that it was handled by the 36th Street facility?

A I don't see any.

Q Do you know what the ultimate disposition was of the two packages that you allegedly saw Mr. Stephens handling?

A As far as I know, they were delivered the following Monday.

Q To the addressee?

A Right.

Q With the contents enclosed?

A I'm not sure of that. I don't know.

Q You did state you never saw Mr. Stephens take anything out of the two parcels?

A That's correct.

Q When Mr. Stephens took one of the parcels over and he made an entry into a book and he related something to his supervisor, was he doing the proper thing for a registry clerk who might have found a parcel in damaged condition?

A That I'm not sure of because I have never worked registry section.

MR. FELDMAN: No further questions.

MR. WILSON: May I just see the package, your Honor? I am not sure whether there is any redirect.

(Pause)

REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Moffa, did Mr. Feldman ask you whether there was a 36th Street facility postmark on this?

A May I see that?

Q What was your answer to that question?

A I didn't see it offhand.

Q I point to a particular postmark on there and ask you whether that is a 36th Street facility postmark (indicating)?

A Yes, it is.

MR. WILSON: I have no further questions.

THE COURT: All right, you may step down.

MR. FELDMAN: I just have one more on this, your Honor.

RECROSS EXAMINATION

BY MR. FELDMAN:

Q Can you tell me the date of the 36th Street

facility postmark?

A I really can't make it out. I don't know if it is a 6, a 5.

MR. FELDMAN: I have no further questions.

THE COURT: We will adjourn until 9:45 tomorrow.

Mr. Feldman, you are welcome to look over the exhibits overnight.

MR. FELDMAN: I can take them with me? Fine.

THE COURT: I don't have any objection to Mr. Feldman taking the exhibits. Do you?

MR. WILSON: No. I would ask him if we can make Xeroxes of them before he leaves.

MR. FELDMAN: That is fine. I would also like to look at the time cards.

(Adjourned to January 7, 1976, at 9:45 A.M.)

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JESSE B. STEPHENS
v.
UNITED STATES OF AMERICA,
UNITED STATES POSTAL SERVICE, et al.

January 7, 1976
9:45 A.M.

--

THE COURT: Let us go forward with the Stephens case.

S T E W A R T M. J O N E S, resumed.

THE COURT: Mr. Feldman, could you cross-examine Mr. Jones now?

MR. FELDMAN: Yes, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. FELDMAN:

Q Inspector Jones, aren't there two types of registered mail, one called mail and one called parcel post?

A I do not believe so, no.

Q Isn't parcel post, registered parcel post anything which is over two pounds and anything under two pounds is just called registered mail?

A Regardless of the weight, if it is sent as registered mail, to the best of my recollection, it is referred to as registered mail.

Q Yes, I understand that. But with registered mail there are two types, there is parcel post and there is non-parcel post; is that correct?

A It is a new one to me. I never heard it referred to that way. I'm sorry.

Q Isn't it true that parcel post is never, in fact, locked in a mail pouch but is kept outside of the locked mail bags?

A No, that is not true.

Q That is not true?

A That is not true.

Q What if an item of parcel post weighed 10 or 15 pounds, how would a carrier put that into a mail pouch?

A If the parcel is too big to be placed in a pouch, then it would go as an outside. But if it is mail enough to fit into the pouch, in all probability it would be pouched.

Q But many, many items of mail are, in fact, transported by the Post Office outside of the locked bags, is that correct?

MR. WILSON: Objection, your Honor.

THE COURT: What is the objection?

MR. WILSON: I don't know whether we are talking about registered mail or general mail.

MR. FELDMAN: Registered mail.

THE COURT: You are talking always about registered mail?

MR. FELDMAN: Always about registered mail.

When I use the word mail I mean registered mail.

Q Isn't it true that registered mail is often carried outside the bags by the Post Office?

A Yes, if it is too large for enclosure.

Q Right.

The records of the Post Office don't distinguish between mail which is carried inside the pouch or outside the pouch, do they?

A They should.

Q How would that be distinguished?

A The manifold bill there would be the letter O placed before the registered number to indicate an outside.

Q What were the normal working hours of the 35th Street facility registry cage?

A To the best of my knowledge, it was from approximately 5 A.M. until -- I don't know the closing time, but it would be some time in the afternoon, after the carriers had completed their deliveries on the street.

Q Some time around 5:30, 5 o'clock?

A That would be a good guess, yes.

Q And then it was closed from 5 in the evening,

approximately, until 5 the next morning?

A To the best of my knowledge, yes.

Q And it was also closed on Sundays, wasn't it, during the entire day?

A I believe so, but I am not certain of that fact.

Q How many keys were there for the lock to the door to the registry cage?

A I have no idea.

Q Do you know who maintained the keys or key?

A No, I do not.

Q Don't you think that a part of your investigation would be --

THE COURT: Let's not have that.

The fact he doesn't know how many keys is of some relevance, but I don't know why we have to argue about whether it was good investigation.

Q Is it possible for a worker in the Post Office to go into the registry cage after the cage was closed and all the employees had left?

A If they had left the door unlocked, yes, I would assume he could get in.

Q What if the door was locked, then the key must have been outside of the cage, otherwise you couldn't regain entrance into it?

A I would assume so, yes.

Q Was it possible for registry workers, if the door was locked, having a key inside of the cage after the workers had left?

THE COURT: Mr. Feldman, he doesn't know how many keys there were. Whoever would have a key could get into that registry. I will assume that's true.

MR. FELDMAN: What I am trying to show, your Honor, is that, in fact, after the cage was closed, workers did go into the registry cage. After the regular registry workers had left for the day, there were workers who did go into the cage.

THE COURT: Is he going to know about that?

Do you know about workers going into the registry cage after the end of the working day?

THE WITNESS: No, sir. No, sir.

THE COURT: But you don't know who would have a key?

THE WITNESS: I have no -- I don't know who--

THE COURT: You don't know how many people or who would have access after normal working hours through having a key, right?

THE WITNESS: No, I do not.

THE COURT: All right.

Q Do you know if any of the mail got placed into the

registry cage after the workers had left for the day for distribution of work by them the next morning?

A I don't know for a fact, but in all probability if registered mail was received at that facility in pouches or large outsides during the time the registry cage was closed, normally a supervisor should have opened the cage to allow that mail to be put inside for safekeeping.

Q Isn't it true that sometimes mail was left overnight within the 36th Street facility but outside the registry cage?

A Are we talking about registered mail again?

Q Registered mail.

A I don't know.

Q Did undistributed mail get left in the cage overnight after the workers had left, mail which could not be given to the carrier or was returned to the carrier because of inability to deliver it?

A I would assume it was, but I couldn't answer the question factually. I don't know.

Q You are aware that there was a large safe in the registry cage?

A I know there was a safe in there, yes.

Q And that safe -- wasn't that safe used by workers other than those assigned to the registry section?

A I have no idea.

Q Wasn't it used by the short paid and certified mail and COD workers who worked outside of the cage?

MR. WILSON: Objection, your Honor.

THE COURT: Overruled.

A I have no idea.

Q During your observations from the observation gallery, didn't you notice that workers were coming in and out and using the safe?

A No, I did not.

Q How many workers worked in the registry cage at one time; an average of how many workers?

A The time that I made my observations, there were three employees in the registry section.

From reading some of the other inspectors' reports, I gather that there were upwards of seven people in there at various times, but I never observed personally.

Q You only made one observation from the registry cage?

A Yes.

Q That was on March 22, 1969?

A Yes.

I'm sure I was in the gallery at subsequent dates and did look into the registry section, but not -- this was

the only instance when I was there specifically to use the gallery to observe the registry section.

Q When the workers are working in the registry cage, don't they work side by side?

A Yes.

Q And there is no separations or partitions among the workers?

A None whatsoever, no.

Q So you could have seven or eight workers just working in the same room handling mail, stamping mail?

A Yes.

Q There were two types of registry clerks, weren't there, Mr. Jones, a regular registry clerk and an auxiliary clerk who could work in the cage?

A Most facilities have those two classifications, yes.

Q Do you know which classification Mr. Stephens was?

A He was a regular, I believe.

Q Do you know how many regulars there were assigned to this particular cage?

A No, I do not.

Q Regular clerks were bonded by a surety company, weren't they, against any misdoings?

A Yes.

Q But auxiliary clerks were not so bonded?

A To the best of my knowledge, they were.

Q They were bonded?

A I believe at that time all employees were bonded by a bonding company.

Q But you are not sure?

A I could clarify it this way:

If at that time registry clerks were bonded by the Post Office Department, not through their unions or anything of that sort, if registry clerks were bonded, then all employees were bonded.

Q Did you know the value of Mr. Stephens' pension and other compensation during the course of your investigation?

A Prior to the apprehension, no.

Q After the apprehension, when you began investigating prior losses, did you become aware of Mr. Stephens' pension that was due?

A I don't believe I did, no, sir. I may have had a general idea of the amount, but I'm not sure on that part.

Q Was that a factor-- having a general idea that there was, in fact, money coming to Mr. Stephens, was that a factor in your investigation that there existed a fund for the Post Office to recover against Mr. Stephens?

A No, it wasn't.

Q Isn't it true that mail which is destined for the 36th Street facility was opened and rebagged a number of times by different Post Offices to sort the mail before it reached the 36th Street facility?

A It would depend on the point of origin, the volume and several other factors.

Q No mail is ever shipped directly in a pouch to the 36th Street facility, was it?

A I would say yes, if the piece were accepted at the General Post Office New York.

Q Other than the General Post Office in New York, what if the piece was coming from -- we only have one item which was mailed to New York and that was Exhibit No. 4 and it was mailed to Boston and then back to New York from Boston so we are speaking about all other items outside of the New York area.

A Under normal conditions, any piece mailed outside of New York would have at least been in the pouch probably opened at the General Post Office and then prepouched to the 36th Street facility.

Q Right. And if that mail was coming by train, it might also be rebagged aboard the train, sorted aboard the train and rebagged?

A It is possible. If the dispatching office labeled the pouch containing the piece to an RPO train which worked mail, yes, it could have been worked en route and that pouch labeled to the General Post Office who, in turn, should then relay it to the 36th Street facility.

Q And the same procedure might be followed I believe it is called AMF Kennedy, if mail came in that way it would be opened and rebagged at Kennedy.

A If the bag were labeled to AMF Kennedy, yes.

Q Every time a bag was opened and the mail was rebagged to different bags, was a new manifold made out?

A Yes, sir.

Q When the mail finally wound up at the 36th Street facility, one bag at a time was opened and it was dumped on the table by a clerk.

What happens to that mail after it is dumped on the table?

MR. WILSON: Objection, your Honor. There is an assumption in that question that is not in evidence.

THE COURT: If the assumption is -- is the assumption right?

MR. FELDMAN: I believe he testified to it on direct.

MR. WILSON: I am specifically referring to the

one bag at a time reference. I do not recall the witness making that statement. It may be correct.

THE COURT: Why don't you just ask your question, don't assume all that. Okay?

Q Was one bag or was more than one bag at a time dumped out on a distribution table and then sorted by the workers?

A I would say that one individual, for instance, if Mr. Stephens opened a pouch, he would dump that pouch, and if he follows procedure he should verify the items in that pouch before dumping another.

However, it is possible, and I can't say it happened there, I don't know, that another employee could have dumped another pouch on the other end of this same table, because I believe it is about six or eight feet in length, another employee could have dumped a pouch on the other end of that table keeping the two mail separate and both of them could be there verifying mail from separate pouches without intermixing the mail.

Q More than one employee worked on more than -- withdraw the question.

More than one employee worked on opening a bag of mail and sorting it, isn't that true?

A Yes.

Q And that one man generally opened the pouch and dumped it on the distribution table and that other employees at that point postmarked it with the 36th Streeet facility stamp, is that correct?

A I don't recall. It could well be. I don't know.

Q At what point did the mail get stamped with the 36th Street facility stamp?

A It should have been stamped at that point.

Q Under normal procedures?

A Under normal procedures, right.

Q Then at that point the mail gets distributed into cubby holes?

A Yes.

Q Mail becomes mixed at that point, does it not, from different bags? The mail is then mixed into cubby holes according to the particular carrier assigned to a route?

A Yes.

Q And there also existed what is called tubs which are kind of like laundry baskets and that was for the parcel post mail which is not taken out by carriers but by other assigned carriers, is that correct?

A Possibly. I couldn't testify to that.

Q Were any records made of what mail was put into what particular cubby hole? Was a manifold made for that?

A Not to my knowledge.

Q Couldn't an employee at that point withdraw a piece of mail from a cubby hole?

A An employee in the registry section?

Q Right. Just take out a piece of mail from the cubby hole?

A Certainly.

Q There were no restrictions on that?

A I don't understand--

THE COURT: I don't understand.

Q Were there any restrictions on an employee going over to a cubby hole and taking out a piece of mail that had been placed there?

THE COURT: If he had a business reason to do it he obviously could. But if he was just stealing it, he couldn't.

Isn't that obvious?

MR. FELDMAN: I am trying to show that there were other employees who had access to the mail.

THE COURT: Can you help us out on that?

THE WITNESS: I would state unequivocally that any employee in the registry section would have access to any piece of mail in that registry section.

Q You stated one of your criteria that you decided

Mr. Stephens worked on a particular day when the mail would normally have arrived in the registry section?

A Yes.

Q What was the normal work week for registry workers?

A Five days.

Q Let me ask you, wasn't it five days working and two days of rest?

A Yes.

Q And that would be an 83 percent chance that Mr. Stephens was on duty on any given day, is that correct?

A I don't know about your percentages.

Q I believe it is correct.

THE COURT: All right.

Q There was also a five out of six chance that any other employee worked on a day that a particular registered item was due to reach the 36th Street facility, isn't that true?

A Would it not be five out of seven? There are seven days in a week.

Q Sundays they are closed.

A Yes. The other employees working there, if they were regular registry employees, unless on annual or sick leave, would be working in the registry section five days out of a seven-day week.

Q You testified that the depredations stopped after Mr. Stephens' arrest.

You also testified that the registry cage had been moved so it was near an observation gallery.

When did that move take place?

A I don't know exactly. Some months prior to the time that Mr. Stephens was actually apprehended, I believe.

Q Couldn't that be an explanation of why the losses stopped, why the depredations stopped if there was now an observation gallery over the registry cage?

A Yes, sir, except they didn't stop when it was moved.

Q But they stopped following the arrest, is that true?

A They stopped following Mr. Stephens' arrest, yes.

Q Was Mr. Stephens' arrest made known to the other employees in the registry section?

A I'm sure every employee in the facility knew it by Monday morning.

Q Wouldn't that be an explanation as to why -- an explanation for the stopping of the depredations?

A It could be, yes, sir.

Q Isn't it true that about the time that Mr. Stephens left, there were also a couple of regular registry clerks who

left the cage?

Specifically, do you recall Abraham Weitman?

A No, sir, I never heard the name before.

Q Do you recall a Mr. Tagliapetra?

A No, sir.

Q And you have no knowledge of these two gentlemen working in the registry cage and then leaving about the time that Mr. Stephens was arrested?

A No, I do not.

Q Was there a turn over of personnel in the registry cage?

A I assume there was, but I have no -- I made no checks to determine that there had been a turn over.

Q You were there for only a year and a half after the arrest, from March, 1969, to September, 1970, is that correct?

A No, that's incorrect, and I want to bring that to your Honor's attention.

I was there until September of 1971.

Q Right. I know your testimony.

A I believe I said both times yesterday at various times and I checked my diaries this morning before coming down here and it was 1971.

Q During that two and a half year period --

THE COURT: Until September of 1971?

THE WITNESS: Yes, sir.

Q During that two and a half year period, were all depredations reported to you? Would all depredations normally be brought to you?

A They would be brought to my attention, yes.

Q Didn't you state yesterday that not necessarily all depredations would be reported to you?

A In response to what question?

Q In response to questions about the depredations.

You stated that you weren't aware of any depredations, but not necessarily all depredations would be reported to you.

A Under normal conditions -- I don't recall the question that I made that answer to, but I would say this, that under normal conditions, any supervisor covering the district that I was assigned who become aware of a possible depredation problem, whether it involved registered mail or ordinary mail, would report that through his supervisor to either I or the inspector in charge at New York, New York, who was my boss, who, in turn, would refer that information to me.

Q Were there other losses prior to the arrest for other than jewelry?

A Other registry losses?

Q Other registry losses. I am always speaking about registry now.

A If they were, I'm not aware of them, no.

Q Did you bother to check? Did you check if, in fact, there were other losses other than jewelry?

A No, I did not.

Q Did you check if there were any other losses other than the ones we are concerned with at this trial?

A Following the apprehension, I reviewed -- I checked all records that were available to me relative to any registry losses at the 36th Street facility which might be considered under the Boerner decision in Mr. Stephens' case.

Q Did you find any other losses which are not the subject of the trial?

A Yes.

Q Can you tell us about how many others there were?

A I don't recall.

I recall one in particular. It involved a-- I believe it was an emerald with a value of approximately $70,000.

Now, this was some time prior to that and it was a case investigated by Inspectors Quigley and Forester, and at that time they personally interrogated and took an

affidavit from Mr. Stephens relative to this.

Q And they decided that-- do you know what conclusion they came to?

A They came to the conclusion that the piece was stolen, but they could not prove who stole it.

Q You made determinations on other losses other than the ones we are concerned with whereresponsible could not be attributable to Mr. Stephens, is that correct?

A I'm sure there were other losses that I could not consider for setoff under the Boerner decision, yes, sir.

Q What was the total value of the articles which were made; not the total paid but the total value which the claimants claimed?

MR. WILSON: Objection, your Honor. The question could be made more specific.

Q What was the total value of the articles that the claimants, in fact, claimed that they had made? Not the total amount paid by the Post Office as a loss.

A I don't know, but I would estimate in the vicinity of a hundred thousand dollars.

Q Did you investigate Mr. Stephens' personal life?

A No, I did not.

Q Did you investigate his assets?

A No, I did not.

Q Did you visit his home?

A No, I did not.

Q Did you speak to his friends?

A No, I did not.

Q Did you investigate any other Post Office employee in connection with the losses at trial?

A No, I did not.

Q Mr. Stephens was the sole employee that you investigated?

A Yes, sir.

Q Did you check any other employee's time cards against the losses?

A No, I did not.

THE COURT: He said he didn't investigate anybody else.

Q Are there any studies which have been made to show how long it takes registered mail to arrive in New York City from a particular destination?

A Not to my knowledge.

I'm sure there have been over the years. I know the postal service does on occasion make what we would call service checks to determine the time it takes us to process mail from New York and get it to another point in the country.

Q There are no such reports that you are aware of, though?

A No.

THE COURT: How much more do you have?

MR. FELDMAN: I guess about 20 minutes, your Honor.

THE COURT: Then would the government rest at the conclusion of the cross of Mr. Stephens?

MR. WILSON: I think I will have three or four questions on redirect.

THE COURT: I mean, you are not going to call any more witnesses?

MR. WILSON: No, your Honor.

THE COURT: Then you would intend to put Mr. Stephens on the stand?

MR. FELDMAN: I do intend, yes, your Honor.

THE COURT: About how long?

MR. FELDMAN: Perhaps 20 minutes. I mentioned that yesterday that I intended to call him.

THE COURT: I know you did. That's all right.

I am afraid I have another trial, as I said, at 11. We got a late start this morning.

Go ahead now for a little while and we will do the best we can.

Q In your investigation you decided that it would take

a certain amount of time or days for a particular parcel to reach the 36th Street facility, is that true?

A In my investigation I determined that under normal conditions a letter or registered parcel mailed from one point would under normal conditions have arrived at the 36th Streeet facility at a given time, yes.

Q The first parcel or the first exhibit was mailed on January 21, 1966, and from the records in Exhibit 1, it shows that it arrived on January 26th, which would be five days after that.

Is that true?

A I would have to see--

Q Perhaps you would like to look at the exhibits (handing).

I believe that in paragraph 3 it states in all probability it was received at the 36th Street facility on January 26th.

A Yes.

Q That would be five days after it was mailed from California?

A I'm trying to find the mailing date.

Q It is up on the top below Mr. Forester's name.

A Yes. Oh, yes. Five days. You are correct.

But that would not be a normal time, because that

paragraph indicates that the piece was first dispatched to Radio City Station -- it was taken out for delivery, special delivery article from the General Post Office, then dispatched to Radio City Station and subsequently dispatched to the 36th Streeet facility, which each of those would normally take one day in the Manhattan area, approximately.

Q So then this parcel took four days from California, allowing --

THE COURT: Including all the stops he mentioned. Of course. All right.

Okay, let's keep going, please.

Q With respect to Exhibit No. 9, the package was mailed on January 16, 1969.

A Yes.

Q According to the time records, Mr. Stephens did not work on the 17th, but did work on the 18th.

A Yes.

Q Which would be the first date that he could possibly have access to the package?

A That's correct.

Q Didn't you in that case conclude that it would have taken only two days for a parcel to reach from California to reach the 36th Street facility?

A Yes, because the Form 1510 indicates this parcel was shipped via airmail, which normally would take a 24-hour time from California to the east coast.

Q With respect to Exhibit No. 1, there are no time cards for 1966 --

THE COURT: He has said that.

I do not need any repetition.

Okay, next question.

Q Attached to a part of the exhibit is a letter to the Police Department from the Post Office stating that they believed that the package was lost.

A Lost while in custody of the postal service, yes.

Q Doesn't that indicate to you that the Post Office believed that the package was somehow lost, but that a postal employee was not responsible for the loss?

A No, sir.

Q With respect to Exhibit No. 2, the report of August 23, 1968, indicates that clerk Olivetto, who is a clerk in the registry section, discovered that the parcel had been broken or somehow damaged?

THE COURT: Right, it indicates it. What is your question?

Q Clerk Olivetto's name appears on three of the exhibits, specifically, Exhibits 2, 4 and 5, as having

found parcels which were damaged.

A Yes.

Q Did you question clerk Olivetto about this?

A No, I did not.

Q With respect to Exhibit No. 3, the report of December 17th, the last line of paragraph 3 states that there were normally a number of clerks handling city distribution to J.F. Kennedy and there is no way to place individual responsibility, and paragraph 6 states similarly that there is no way to fix individual responsibility.

Doesn't this report contradict your investigation that Mr. Stephens was responsible for the loss?

A Yes.

The report does, but my investigation does not.

Q The report does, in fact, contradict your conclusion that Mr. Stephens was responsible?

A No, I don't think it contradicts it. It states that the inspector was not able to identify anybody responsible for this loss.

THE COURT: Those statements were in what exhibits, 3 and --

MR. FELDMAN: Exhibit 3.

THE COURT: All right.

THE WITNESS: It is in the inspector's report.

THE COURT: Okay, fine. Next question.

Q As part of Exhibit 3 there is a letter from a Diliapo claiming that she had found loose mail in a couple of pouches transferred from the 36th Street facility.

A Yes.

Q And Mr. Stephens, as part of those exhibits, it indicates that Mr. Stephens was the clerk who, in fact, handled those pouches for delivery to Grand Central.

A The Form 3852 indicates Mr. Stephens was the dispatching clerk, yes.

Q Which means that he handled that pouch?

A Yes.

Q Don't you think it was rather dumb of Mr. Stephens to sign a manifold knowing that there were remnants of a rifled package in the bag?

A If he knew there were parts of a rifled parcel in the bag I would say he was absolutely insane to sign that manifold, yes.

Q So isn't it possible, then, that the package was already in the bag before Mr. Stephens started working on packing that pouch?

A If it were then he did not follow postal instructions in selecting the pouch, because as I demonstrated yesterday before, when a pouch is selected for use in dispatching

registered mail the regulations require that the dispatching clerk examine it for holes and also to insure that it was absolutely empty.

THE COURT: This relates to what exhibit again?

MR. FELDMAN: Three, your Honor.

THE COURT: Let's see. I want to get clear on the point here.

What was the situation that was found?

Mr. Stephens had signed a manifold?

THE WITNESS: Yes, sir, your Honor.

That's the one where two pouches were received at Grand Central Station. One of the pouches contained an envelope with a pair of gold cufflinks in that envelope. It was subsequently determined that those cufflinks were part of a registered parcel which contained, when mailed, seven pair of 18 carat diamond ear clips.

The envelope was found in a pouch at Grand Central Station which had been prepared at the 36th Street facility and dispatched by Mr. Stephens.

THE COURT: What was found?

THE WITNESS: The envelope.

THE COURT: What did you say was insane if he did what?

THE WITNESS: If he used that pouch and dispatched

it with that part of a rifled registered parcel in it knowing it.

I'm saying if he knew that that envelope within the pouch--

THE COURT: How could you conclude that he was responsible for taking that?

THE WITNESS: I concluded that Mr. Stephens was responsible for taking that because it was in a registry pouch dispatched from the 36th Street facility to the Grand Central Station and from observations made by Mr. Parisi and Moffa on one Saturday--

THE COURT: No, no, let us just limit it.

Is this situation made -- I mean, just looking at this individually, would you say it was unlikely that he would do anything that you say would be insane?

THE WITNESS: When I used the word insane, what I meant, your Honor, if he knew that envelope were in the pouch and he went ahead and made a dispatch with it in there and signed his name on the bill knowing that it was in there, then I would say --

THE COURT: Well, that's what he did.

THE WITNESS: That's what he did.

I'm saying if he knew the envelope were in that pouch, then he was insane to sign the bill and dispatch it.

THE COURT: Does that mean it was unlikely he did something? He is not insane, is he?

THE WITNESS: No, sir, I don't think he is. I am saying I think he did not know the envelope was in the pouch. That is my assumption.

THE COURT: How can he not know it?

THE WITNESS: I am assuming, and I assumed when I charged this loss to him that he rifled the parcel in the exact same manner he did my test parcel inside that pouch and that this part of the register fell out amongst other mail that may have been in there and he was unaware of it when he made the dispatch.

THE COURT: In other words, you believe that this particular part of that package simply fell out and remained in the pouch?

THE WITNESS: This is my belief, yes, your Honor.

THE COURT: And that he thought that he had the whole thing removed?

THE WITNESS: This is my assumption, yes, sir.

THE COURT: He signed a manifold recording this package as being part of the shipment.

THE WITNESS: No, he did not. That package-- the package was --

THE COURT: I see. It was in there, but it was not

listed on the manifold.

THE WITNESS: It was over and above everything shown on the manifold.

THE COURT: Okay.

We have to figure out a way to get this. We have a little more to do and I have got some other matters that I have to go to.

We will keep it going for a few minutes to see if we can get a reporter at lunchtime.

Let us go as quickly as we can.

(Pause)

THE COURT: I think the best I can do is to -- I have these other appointments I have to keep. I will have to ask you to come back at 1 o'clock. We will finish it up during the lunch hour. That is the best I can do.

MR. FELDMAN: That is fine with me, your Honor.

THE COURT: All right. So we will adjourn this to 1 o'clock.

MR. FELDMAN: In the same room?

THE COURT: Right here at 1 o'clock.

(Recess)

S T E W A R T M. J O N E S, resumed.

CROSS EXAMINATION CONTINUED

BY MR. FELDMAN:

Q With respect to parcel or Exhibit No. 3, your assumption was that Mr. Stephens took the package and you explain away the fact that part of it was left in a pouch he has signed for handling by saying he made a mistake in leaving the remnants of a package that he had rifled in the pouch, is that correct?

A Yes.

Q Miss Pough is the one who found the remnants of the package when she made out the report.

Did you consider Miss Pough rifled the package and said she found part of it in the pouch?

A Never.

Q Did you investigate Miss Pough at all?

A I did not.

Q Wasn't it possible for someone to throw the remnants of the parcel into the pouch that Mr. Stephens was working on without his knowledge?

A Yes.

Q I would like to move on now to parcel number 4, which is also Exhibit No. 4.

A I don't have the exhibits.

THE COURT: Just ask the questions.

Q I think you will probably need the exhibits.

T2 pm 4 The report of October 18, 1968, states that clerk Olivetto was the opening clerk and that he reported that the package was received damaged.

What exactly are the duties of an opening clerk? What is meant by the phrase opening clerk?

A This is the employee who would unlock the rotary lock, dump the mail from the pouch onto the table, and then verify the contents of the pouch against the manifold registry bill.

Q At the same time that he was verifying the mail against the manifold wouldn't he also be examining the particular items?

A Possibly.

Q He would pick them up in his hand, wouldn't he?

A No, not normally. He would have them on the table and as he was checking -- if they were faced up, so that the registry number was up. In normal course, if I were doing this myself, I would be looking at the manifold for the number and the number on the piece and checking it and sliding that piece aside. I would not pick the piece up in my hand.

Q The report does state that clerk Olivetto was the

one who found that the package was in bad condition?

A Yes.

Q Wouldn't it be likely then that in fact he picked up this package at the time he was checking the manifold and discovered that it in fact was damaged?

A No question in my mind he had to pick that parcel up at some point to determine it was damaged, yes.

Q So at that point the package was damaged, right after being opened by the clerk, the package was noted to be damaged?

A At some point after the pouch was opened. But there was 190-odd pieces in the pouch, which would take any employee a period of at least I would estimate 15 to 20 minutes to verify each piece therein.

Q The report of November 20, 1968, in paragraph 5 indicates that 10 other employees had access to the register while it was in the custody of the Post Office in Boston and the next paragraph, paragraph 6, the inspector states that it was felt the register was rifled while in the custody of the postal service at an undetermined point and there is no way to fix individual responsibility, and this report was made a few months after the article was mailed, and presumably the inspector had access to the original Post Office documents.

Doesn't this report contradict your conclusion that--

THE COURT: You have gone into this.

MR. FELDMAN: This is in another-- I think this was in a previous parcel, your Honor.

THE COURT: But the point is the same point. This is really very argumentative and the argument I think this witness has already met. There were isolated inspectors who investigated individual items and could not come up with any fixing of responsibility. The only way that this inspector came up with his determination against Stephens was on the basis of an overall investigation of a number of crimes after Stephens had been observed to be stealing mail. It is a matter of in one case an inspector had one item, one little bit of evidence. Now we have a completely different set of evidentiary facts.

MR. FELDMAN: Except that this was the fourth parcel and there were other parcels too.

THE COURT: Again, it is a matter of argument. I get the point.

MR. FELDMAN: Okay.

THE COURT: You can certainly bring it out, anything in these exhibits that needs to supplement what he has brought out. We just don't need to argue with the witness about it.

MR. FELDMAN: I would like to move on to parcel

number 5.

THE COURT: All right.

Q According to the exhibits, the Post Office originally determined not to pay the claim in this case because it was the parcel was under-insured?

A Yes.

Q Is that the normal procedure that they follow where a parcel is in fact under-insured?

A Yes.

THE COURT: Why did they ultimately pay it then?

THE WITNESS: They paid this on -- I believe on my recommendation in one of my reports. When I sent in the report outlining the cases that should be considered for collection against Mr. Stephens I pointed out the fact that the inspector in this case had previously recommended against the claim but stated that since Mr. Stephens --

THE COURT: You mean you stated?

THE WITNESS: I stated in my report that since Mr. Stephens had been apprehended at the facility for theft of mail that they reconsider or that they consider paying the claim.

THE COURT: All right.

MR. FELDMAN: I would just like to point out in this case again that the original recommendation was that no

employee was responsible.

THE COURT: All right.

MR. WILSON: Excuse me, your Honor. Could Mr. Feldman point us to the particular portion of the Exhibit 5 where the conclusion is reached that no postal employee was responsible.

THE COURT: I assume they would have arrested the person back then and there if they fixed the responsibility.

Q Inspector Jones, if the Post Office does feel that an employee was responsible then they do in fact allow the claim although it is under-insured, is that right?

A It would be up to the individual inspector based on the circumstances that he developed in his investigation.

THE COURT: All right. How much more do you have?

MR. FELDMAN: I have no further questions on the other exhibits because there are no reports on them.

THE COURT: All right.

MR. FELDMAN: I just have a few other questions.

THE COURT: Fine.

Q Do you recall Mr. Moffa's testimony yesterday about the two parcels that he stated Mr. Stephens was somehow tampering with on March 15, 1969?

A Yes.

Q Do you know what the ultimate disposition of those

two parcels is?

A Yes. At my direction the special investigators who worked with me accompanied the carrier making delivery of those two articles on Monday and in the presence of the special investigator the addressee was asked to open the parcel and determine if the contents were intact in each instance the contents were intact. They were removed by the addressees and the wrappers recovered for my investigative case.

THE COURT: What were the contents?

THE WITNESS: I don't recall exactly on each of them. One of them contained either a man's or lady's watch which was being sent in for repairs, I believe, and the addressee stated that the works in the watch were of no value, but the case itself was worth $1,300, or something to that effect. I don't recall what was in the other, your Honor.

THE COURT: Were they both jewelry?

THE WITNESS: To the best of my recollection, yes, sir.

Q On March 22, 1969, the day of the arrest, there was also a second test parcel which was put into the mail by you. What became of that test parcel, what was its disposition?

A Following Mr. Stephens' arrest I had one of the aids

working with me go down into the registry section with a foreman and recover the parcel and it was subsequently opened up and the contents used in some other investigation at some later point.

Q Was the parcel found in good condition?

A 100 percent, yes, sir.

Q Did you observe Mr. Stephens doing anything out of the ordinary with that second test parcel?

A He did not handle that parcel at all during that date.

Q You mentioned that one of the criteria in making your decision was a case called the Boerner case.

A Yes.

Q Can you tell me what the criteria in the Boerner case is?

A The criteria that I was working under was, one, that a loss had occurred--

Q Just tell me about the Boerner case.

MR. WILSON: Your Honor, I object to that.

THE COURT: Yes, sustained. Let me just put your mind at ease. I am not giving weight -- I have read the Boerner case. The Boerner case deals largely with the admissibility of evidence and we have a very much different case here and I am not giving weight to the conclusions of

Mr. Jones. I will determine myself as the finder of the fact here whether the government has sustained its burden of proof on the evidence here as to its case, and when I say "the evidence here," I am excluding conclusions drawn by Mr. Jones. I will consider the evidence about the portions of those reports in evidence which have been agreed to be put in, showing time of mailing, what happened on receipt, condition and so forth, those what I will call objective facts.

MR. FELDMAN: In that case then I have no further questions.

THE COURT: Do you have anything further?

REDIRECT EXAMINATION

BY MR. WILSON:

Q Inspector Jones, you used the term RPO in your response to one of Mr. Feldman's questions. Can you just briefly define the term RPO?

A That is referred to as a railway post office.

Q Could you in a few words just tell us what that is?

A Yes. This is actually a post office on wheels. They used to be on railroads. We no longer have them. But there would be a crew assigned to a railroad car. We had distribution cases and everything in that car. Like a small post office, in effect.

Q As to the 12 articles that you have charged to Mr.

Stephens, were any of those listed on manifolds, so far as yo could determine, as what I think you referred to as O parcels that is, parcels outside the pouch?

A Not to my recollection, no.

Q When registered mail is transported to a facility at which it is going to be broken down and repouched to go to various other facilities is a new manifold prepared for each new pouch?

A Yes.

Q At that time, at the time of repouching and preparation of new manifolds, is the responsibility of the employee doing that job to note the condition of the package if it is in an unusual condition?

A Yes, if there is anything noted out of the ordinary with that parcel the employee should report it to his supervisor and he should also endorse a manifold showing the condition of the parcel he is dispatching.

Q Mr. Feldman asked you about two individuals, one whose name was I believe Tagliapetra, and another employee in the registry cage at the 36th Street facility.

Did you ever observe those individuals, to your knowledge?

A Not to my knowledge, no.

THE COURT: While we are waiting, I think you said

that there were time records still in existence beginning in 1967, right?

THE WITNESS: Yes, your Honor.

THE COURT: I don't think you were asked about the second claim involving June 6, 1967.

I see. I don't think that was necessary because the indication was that Mr. Stephens had received that. All right. We don't have to go into that.

Do you have anything else?

MR. WILSON: I think I have one or two more.

THE COURT: Let's go.

Q Inspector Jones, you were asked whether you had investigated Mr. Olivetto or Miss Pough in connection with one or two of these registry losses. Can you tell us -- and I believe you said you did not.

A I did not.

Q Can you tell us why you did not?

A I had no reason to suspect them of any depredation.

Q Finally, Inspector Jones, in connection with-- do you have the exhibits before you?

A Yes.

Q In connection with Exhibit No. 4, I believe you were asked yesterday whether you could determine what the article was that was missing from that exhibit.

A Yes, I was.

Q Do you recall being asked that question?

A Yes.

Q What was your response to the question?

A I responded there was no 565 form with the file and there was nothing in the inspector's report that indicates what the contents were.

Q After we adjourned yesterday did you make an attempt to locate the 565 form concerning that particular parcel?

A Yes, I did.

Q And were you successful?

A Yes, I was.

Q Do you have that form with you?

A Yes, I do.

THE COURT: That's in connection with Exhibit 4?

MR. WILSON: Yes, your Honor.

THE WITNESS: Yes.

THE COURT: All right. Maybe Mr. Feldman will agree to have that attached to Exhibit 4.

MR. FELDMAN: No problem, your Honor.

THE COURT: All right. Staple it.

Q The only question I have concerning that is now from that 565 form can you determine what the article -- the

description of the article that was taken or missing?

A Yes. A platinum and diamond clip broach, 24.12 carat.

MR. WILSON: I have no further questions at this time.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Does the government rest?

MR. WILSON: Yes, your Honor, the government rests.

THE COURT: All right.

Mr. Feldman?

MR. FELDMAN: Yes. I have one witness, your Honor, the plaintiff, Mr. Stephens.

THE COURT: All right.

J E S S E B. S T E P H E N S, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELDMAN:

Q Where do you reside, Mr. Stephens?

A 300 East 159th Street.

Q Where is that located?

A That's the Bronx, New York 10451.

Q When did you start working for the Post Office?

A January, 1948.

Q And when did your employment terminate?

A March of 1971.

Q When did you start working at the 36th Street facility?

A I was -- when it first opened. I was one of the first clerks to go down.

THE COURT: Speak just a little slower. When was this?

THE WITNESS: I came down from Grand Central when the Post Office opened at 36th Street.

THE COURT: When was that, about?

THE WITNESS: Oh, I was down there around 10 or 12 years.

THE COURT: All right.

Q That would be around 1957? You mean 10 or 12 years prior to your dismissal in 1969?

A Maybe five, six, seven years. I am not too sure when we opened up.

MR. WILSON: Excuse me. I think the record may be confused on this point. I believe Mr. Stephens said he stopped working in 1971.

THE COURT: It was March of '69.

MR. FELDMAN: He was arrested in March of 1969 and

as part of the stipulated facts there were administrative appeals dealing with that and he wasn't officially terminated until 1971.

THE COURT: All right. I don't think we have to pause

You were there several years before 1969, right?

THE WITNESS: Right, sir.

THE COURT: All right.

Q What was the nature of your job at the 36th Street facility?

A My job was registry clerk, processing registry mail only. That means letters and parcel post.

Q What was your job before you started at the 36th Street facility?

A I was registry clerk at Grand Central Post Office, 45th and Lexington.

THE COURT: You were always at 36th Street, you were always a registry clerk?

THE WITNESS: Right, sir.

Q During your time at 36th Street facility about how many items of mail did you handle?

A Oh, two, three million, based on what we handle on a Monday, say a Monday.

Q About how many items were handled on an individual day?

A Say on Monday we get in 55 or 60 pouches and each pouch would consist of about 250 pieces of mail, including the outside pieces which were not in the mail, but on the same manifold.

Q That would be about 10 to 12 thousand pieces of mail on a particular day?

A Maybe 15,000, right.

Q Do you recall ever having handled any of the mail that you were accused of taking?

A Never.

THE COURT: What was the last question and answer?

(Record read)

Q Do you recall ever having been asked any questions about any of the mail that you are accused of taking?

A No, sir.

Q Do you ever recall having been asked questions about any other mail which the Post Office claims was lost?

A I say about once, once during my 20 some-odd years, only once.

Q When was the first time that you learned what particular items of mail you were accused of taking?

A Oh, less than a month ago.

Q How did you come to learn that information?

A Through my attorney.

Q Do you remember anything at all about the mail that you are accused of taking?

A Nothing, nothing whatsoever.

Q Do you have any knowledge of how this mail was lost?

A I do not.

Q Do you have any knowledge of any person who might have such knowledge?

A I have no such knowledge.

Q How many workers on an average worked in the registry cage?

A We had eight registry clerks and we had about four or five auxiliary clerks and we used clerks off the floor, which were just distribution clerks, whenever needed, by the request of the registry section for clerks off the floor.

Q Were the regular workers or the regular clerks bonded?

A The regular clerks was bonded.

Q What about the auxiliary clerks? Were they similarly bonded?

A Well, when I was auxiliary clerk I was not bonded. Only regular financial clerks was bonded at the time I went in, you know, registry clerk, at the time I paid my own

bondage fee. Then eventually the Post Office took over paying. But to my best knowledge, only the regular financial clerks.

Q Is there any difference between the type of work that the auxiliary clerks and the registry clerks would do within the registry cage?

A No. Registry clerk was actually in charge, but we all did the same work. We all dumped, we all processed, we all boxed and we all dispatched, we all worked the rewrap table. We did all this interchangeable work among all.

Q How many keys were there to the cage and the rotary locks which are attached to the pouches?

A Only one.

Q One key to the cage and one key --

A Might have been only one in that whole station. I don't think there was a key allowed in their except that one key.

Q Who kept this key?

A Well, we opened from 6 until 4:30. The registry key would be issued to the registry clerk who opened the registry that morning at 6 o'clock. It would remain in the registry section until it was closed. It would be attached to a table, never to be removed until closing time.

Q What happened to the key at the end of the day, around 4:30, 5 o'clock?

A The registry clerk closing out -- they had a supervisor too -- he would turn that key over to the incoming foreman which was on tour 3. That's from 4 to 12. We turn the key over to him.

Q What would that foreman do with the key at the end of his tour? His tour ended around 12 o'clock and then I think tour number 1 would come in.

A Tour number 1 would come in at midnight and he would turn the key over to tour number 1 foreman or supervisor.

Q Did the foreman who had the keys ever go into the registry cage after the cage was officially closed?

A In many cases he would.

Q For what purpose?

A Well, we leave mail in the registry section open and -- say at Grand Central, which is our parent station. He would call up, want to know about a certain piece of mail that was undeliverable, probably, and want to know is that mail on hand or could it be prepared for delivery next day. This man would go in there and check to see if that piece was in there. He would have a right to go in there any time. They issue checks from the registry station at midnight.

Q What kind of checks were those?

A Regular postal pay checks, United States Government

checks.

Q Why were they issued at midnight?

A Well, the midnight fellows, they are going off. That's the start of Friday. We get paid on Friday. He would be entitled to his check before leaving duty.

Q Who would go into the cage to --

A The foreman in charge would have that responsibility He may detail a clerk, anyone to go in there, a clerk or another supervisor, anybody he would desire to send in there.

Q During the day did any non-registry workers go into the cage?

A Yes, sir.

Q For what reason?

A Well, we had what we call certified clerks, short paid clerks, and we had custom clerks. That's foreign mail.

Q For what purpose did they go into the registry cage?

A In the registry cage we had a giant safe. In that safe there was compartment. Each one of these clerks had a box issued by GPO. That's our main post office. He had his stamps and his cash and he had a key within our safe and he deposit his money there daily and taking it out daily.

Q How did such a worker get into the cage?

A Well, he come through the cage -- through the door.

We had only one door.

Q When he came in was mail on the distribution tables?

A Thousands of pieces, maybe hundreds of thousands.

Q Was any mail kept outside the cage when the cage was closed?

A Oh, yes. Say on a Monday mail would come in from GPO say at midnight, maybe they could bring in 50 pouches or 10 or 15 skids. Well, that mail is received by the night foreman. I mean, it come in pouches, come outside pieces. They would just sign for that mail. Transportation clerk would bring it up.

Q What would happen to that mail?

A It would just lie there until we open up in the morning at 6.

Q Would it remain outside the cage?

A Outside the cage.

Q While it was outside the cage who had access to it?

A Everybody in the Post Office, mail handlers, clerks, everybody. But it is not open, I must state, except the outside pieces are outside in tubs on top of the skid. But the rotary mail, I mean, the registry mail, was not open.

Q Was there work going on in the Post Office when the registry cage was opened?

A Oh, yes, around the clock.

Q Only the registry cage had limited hours?

A That's right, sir.

Q Was there any turnover in regular clerks while you were there?

A Two while I was there.

Q Do you recall their names?

A Well, one was Abraham Whiteman, and the other fellow, I always call him Tony, but his name was Tagliapetra or something.

Q Do you know if they in fact left the registry section?

A Whiteman left-- well, they both left the registry section, yes.

Q About what time, when did they leave?

A Whiteman must have left in '69. I would say I left in March. Maybe February, I presume.

Q And Tagliapetra?

A He probably left a little earlier in '69, maybe January or February.

Q What about the auxiliary clerks? Was there a turn over of auxiliary clerks?

A Well, constant turnover. He was not compelled to work in the registry section. Well, he could request to go back on the floor at will. He was not certified as a

registry clerk. He was auxiliary in case an opening came up. But he could desire to work on the floor and they went and come.

Q Have you ever been suspended or disciplined by the Post Office for anything other than the March, '69, arrest?

A No, sir.

Q When did you move into your present apartment?

A 1966, I believe in March or April.

Q Where did you live before that?

A 304 East 156th Street. That's in the Bronx.

Q When did you move into that--

A 1951.

Q In other words, you have lived at two apartments since 1951?

A That's right.

Q How many rooms in your current apartment?

A Well, they say three and a half. It is three and a little something.

Q How much rent do you pay?

A I pay $102.83 rent.

Q What is your present marital status?

A Separated.

Q For how long have you been separated?

A Since '62.

Q Do you have any children?

A Two.

Q How old are they?

A Today, one is 25 and one is 18. Yesterday he was 25.

Q After you were separated in 1962 did you support your wife and children?

A I did.

Q What did that support consist of?

A $60 bi-weekly.

Q And those payments, when did those payments start?

A '62.

Q And are they continuing to the present time?

A No. They were terminated in '64 -- I mean '74.

Q They were terminated in '74?

A Right, sir.

Q What was the reason for the termination?

A Well, my job terminated and I reached the age of Social Security retirement.

Q How old are you now?

A 65 as of August, 1975.

Q Was there any other reason why the support payments terminated?

MR. WILSON: Your Honor, I object to this, pursuing this line of questioning further.

THE COURT: I don't think we are particularly interested in termination, why something was terminated in 1975.

MR. FELDMAN: I withdraw the question.

THE COURT: All right.

Q How do you support yourself now, Mr. Stephens?

A Well, I get a small -- the smallest Social Security payment there is.

Q How much is that?

A I think it is 120 -- just got a $2 raise -- $121 a month.

Q Do you have any other sources of income?

A I have a small income from the United States Army -- Air Corps, a small disability pension.

Q About how much is that?

A That's about $113.

Q Do you have any bank accounts?

A No.

Q Do you have a car?

A No.

Q Do you have any other assets?

A No, except household furniture, and that's ten

years old.

Q How have you been supporting yourself since you left the Post Office in 1969?

A Well, the Post Office denied me my compensation --

THE COURT: I don't see how this is relevant.

MR. FELDMAN: I think his life style, your Honor, is very relevant in this case, and how he supports himself.

THE COURT: Okay.

MR. FELDMAN: It will only take a few more minutes.

THE COURT: All right.

A I went on public assistance -- I guess you call it Welfare -- for two months, and then after the two months, in June, I worked for the Board of Education, Bureau of School Lunches.

Q This was after your arrest?

A After my arrest, after the two months on Welfare, public assistance.

Q Did you ever declare bankruptcy, Mr. Stephens?

A I did.

Q When was that?

I withdraw the question.

Did you ever receive a discharge from bankruptcy?

A I did.

Q When was that?

A The year was 1975.

Q Did you have any assets listed on the bankruptcy schedules?

A No assets.

Q What was the nature of the debts that were listed?

A Personal loan from the Manufacturers Hanover and Trust and I had a Master Charge account from Manufacturers Hanover Trust and I had loaned from the Beneficial Finance Company.

Q What was the reason for the loans?

A Well, the government -- the Post Office had me on trial and I had to supply -- employ a lawyer for two and a half years. I had to pay. I had no other means.

Q That loan money was used to pay attorney's fees?

A The bulk of it, maybe the rest of it trying -- I would say that, yes. And I had a few other debts I had to cancel out, like Sears Roebuck. That's about all.

Q In connection with your arrest in March of 1969, did you plead guilty or not guilty?

A Not guilty.

Q And did you have a trial?

A I did.

Q And you were convicted?

A I was.

Q Did you go to jail?

A I did.

Q How much time did you spend in jail?

A Four months and 28 days.

Q Do you still maintain your innocence in connection with that arrest?

A I do, sir.

MR. WILSON: Object to that question, your Honor.

THE COURT: Overruled.

MR. FELDMAN: I have no further questions.

THE COURT: All right.

Cross-examine.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Stephens, did postal employees when you were employed in the registry section bid on their hours, the tours they would work?

A Well, at one time -- no, it was automatically you would rotate tours, but later on seniority did have preference for bidding.

Q Let's take the year 1968. How was it determined what tour you would work in the registry section during that year?

THE COURT: I don't know how this helps me.

MR. WILSON: Your Honor--

THE COURT: You have a case. The case is a case of largely circumstantial evidence. You know what the elements are in the government's case just as well as I do. What difference does it make how he bid for the tours?

MR. WILSON: I do think it makes a difference, your Honor, but I will approach it in another way that I think will make it more apparent.

THE COURT: Why don't you do that.

Q Mr. Stephens, did you as a rule work on Saturdays in 1968 and '69?

A Well, I possibly could have worked Saturdays. I am sure I worked some Saturdays. But I am not sure at what point the tours changed. I couldn't say I worked all Saturdays. I may have.

Q How many people generally worked in the registry section on an average Monday during the years 1968 and '69?

A Around 15 or 20.

Q Worked within the registry cage?

A That's right, including the men off the floor.

Q How many would work on a Tuesday or a Wednesday?

A Eight regulars and around six -- around 14.

Q How many people worked in the registry cage on a normal Saturday during those two years?

A Well, we had three regulars and probably used about four or five people off the floor, auxiliaries.

Q A total of eight or nine?

A That's right, sir, about that much.

Q Do you recall what days of the week you generally worked during the years 1967 and '68?

A I didn't understand you, sir.

Q How many days of the week does a postal service employee normally work?

A Five days a week, 40 hours a week.

Q And how many days a week does the 36th Street registry facility work?

A Six out of the seven, no Sundays.

Q Does that then mean that you would have one day a week off when the facility was operating?

A You had two if you was off Saturday and Sunday.

THE COURT: He asked you, and you said you didn't understand, but do you remember back in 1967 and 1968 whether as part of your five days you worked on some Saturdays, or what was the situation about Saturday work? Do you remember that?

THE WITNESS: I would say I was -- well, I can't say. The tour may change monthly. But I would say I worked most Saturdays. I was junior man.

THE COURT: Worked most Saturdays in '67 and '68,

right?

THE WITNESS: I couldn't pinpoint no '67 or '68, because we changed monthly some time. Maybe I worked--

THE COURT: Wait a minute. We are talking about the years 1966 through March, 1969. That is what this case is about. Are you with me?

THE WITNESS: Well, I never--

THE COURT: Wait a minute. 1966 through March, 1969, that is the time I am talking about. All right?

THE WITNESS: I understand.

THE COURT: During that time did you work most Saturdays or not?

THE WITNESS: I have to surmise, because that's a lot of time you are covering. We didn't work that straight through for years.

THE COURT: You can't remember?

THE WITNESS: I can't remember.

THE COURT: I am sure that would be a matter of record. It is a little late to start in on that. Let's go to something else.

Q Mr. Stephens, you mentioned an Abe Whiteman and a Mr. Tagliapetra left the registry section in 1969. Did you ever see either of those two individuals remove anything from a registered parcel?

A Did I see them remove anything?

Q From a registered parcel.

A No, I did not.

Q Did you ever see any employee in the registry cage where you worked on 36th Street remove the contents of a registered parcel?

A You mean stealing?

THE COURT: Right.

Q Yes.

A No, no, never.

Q What time did you report to work on March 22, 1969?

THE COURT: What? Look, March 22nd is the day he was observed in this. Really, I have got to conclude this case and I don't want to cut you off unnecessarily, but the case--

MR. WILSON: Your Honor, I believe it will prove relevant.

THE COURT: Let's have just another very, very few minutes.

Q Do you recall what time you reported to work on March 22nd --

A I do.

Q Can you tell us what time that was?

A 6 A.M. That is my scheduled time. Maybe a few

minutes earlier. We had only one tour on Saturday.

Q Do you recall what you intended to do after you left work on that date?

A Oh, boy. Go home, I suppose. I can't remember what I did. That's what I usually did.

Q What did you generally wear to work at the postal service?

A Well, I wore what -- sometimes street clothes, and again -- sometimes I wear street clothes and wouldn't change, because sometimes it wasn't such dirty work, and then again I would change clothes.

Q How many pair of trousers did you usually wear at work?

A Well, all my life I have worn one pair of trousers, no underwear, a pair of cut off old pair of trousers.

Q So do I understand that you wear a pair of what I will call normal length trousers and a pair of what might be called shorts, walk shorts or something like that, underneath them?

A Yes, shorts or old pants. I usually cut my old pants up.

Q Is there any particular reason for this what I think might be called somewhat unusual --

THE COURT: Let's not argue, please. Is there any

particular reason you wear shorts instead of underwear?

THE WITNESS: Well, I didn't have a chance to -- well, I couldn't wear underwear in the registry because it was too hot. I didn't go in the street. I stayed in that building. I usually carried-- I mean, I had to walk almost five or six miles to go to work. So I usually put my little valuables in my little pants pocket underneath. A couple of times I had been held up. The only other reason, I wore it for protection.

Q Mr. Stephens, did you on March 22nd open a package in the registry section?

A Open a package?

Q Yes, sir.

A No, I could -- if I was going to rewrap I could have rewrapped some package, if you call that opening it. But open a package, no, unless I was checking the contents, and that's possible.

Q Mr. Stephens, I show you Defendants' Exhibit 18 and ask you whether you have ever seen the pieces of paper that are contained in that glassine envelope.

A No, I haven't.

Q Can you tell whether you have ever seen these when they were all in one piece?

A I couldn't tell.

Q Mr. Stephens, turning to the date March 15th, did you on that date open two packages in the registry section?

A I can't recall the 15th. I cannot recall that date.

THE COURT: Did you ever prior to the 22nd reach down into pouches and slit open any registered packages?

THE WITNESS: Never.

THE COURT: All right. He denies that. Is there anything else you need to bring out?

MR. WILSON: Can I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MR. WILSON: I have no further questions, your Honor.

THE COURT: All right.

MR. FELDMAN: No redirect.

THE COURT: Does the plaintiff rest?

MR. FELDMAN: Yes, your Honor.

THE COURT: You may step down, Mr. Stephens.

(Witness excused)

THE COURT: As long as this is fresh in my mind, I would like to just put a short decision on the record. I will hear any brief argument you have, although I think I understand your positions pretty well.

What I would like to know before we get into those proceedings however, is something about the figures. I think it is stipulated that the plaintiff claims -- the plaintiff claims $7,533, is that right?

MR. WILSON: I believe that is the amount set forth in the stipulation.

THE COURT: Can you very quickly tell me what the plaintiff's claim is on his complaint?

MR. FELDMAN: Yes. It involves a final salary of $240 and unused annual leave of $544.05.

THE COURT: Wait a minute.

MR. FELDMAN: In paragraph 6 of the stipulated facts, rather, plaintiff's proposed findings of fact.

THE COURT: Look, we should get an agreement on what would be owed the plaintiff if it weren't for the setoff and that should be agreed to. I have got the $240 figure. There is no problem about that, is there, Mr. Wilson?

MR. WILSON: Your Honor, the response to that question is I can't be sure at this moment.

THE COURT: I think you better be sure at this moment. I have got to put a decision on the record. I want to know what you agree the government would owe this man if it weren't for the setoff.

MR. FELDMAN: The first item is the pension.

THE COURT: The pension is the big item.

MR. FELDMAN: That's $6,838.83.

THE COURT: Yes. I think that is stipulated.

MR. WILSON: Yes.

THE COURT: And that includes accrued interest, right?

MR. FELDMAN: Yes, but there is some dispute in this case about whether the plaintiff is entitled to that lump sum payment returned or whether he is entitled to an annuity.

THE COURT: Look, both sides have rested and that means that the record is complete before me on all features of the case.

MR. FELDMAN: I don't think we did agree on the lump sum payment. Our proposed finding was that he was entitled to an annuity of $235 a month.

MR. WILSON: That is a question of law, your Honor.

MR. FELDMAN: He had the option at one time to elect --

THE COURT: Your position is that he would be entitled to an annuity.

MR. FELDMAN: Right, instead of the lump sum.

THE COURT: What is the government's position?

MR. WILSON: The government's position is that he

had at one point an option. He exercised that option on a form that told him that the exercise was irrevocable. He asked for a lump sum in lieu of an annuity.

THE COURT: Did he do that?

MR. FELDMAN: Yes, he did, but the annuity at that point had been denied him and it was done from prison.

MR. WILSON: I agree it was done from prison, your Honor.

THE COURT: Where is the stipulation on that procedure?

MR. WILSON: Your Honor, I was referring to the Exhibit 14 of the stipulation. It will take me a moment to find what paragraph in the stipulation itself deals with that.

Paragraph 25, page 5 of the stipulated facts.

THE COURT: What is it on this exhibit that makes it an irrevocable election?

MR. WILSON: I believe it is under the heading "Notice to Applicant." Let me just see if I can find it.

Point 1 says "If you have more than five years of service," which I believe it is conceded Mr. Stephens had, "you may be entitled to annuity rights which will be forfeit by payment of this refund unless you are later reemployed subject to the Civil Service Retirement Act."

MR. FELDMAN: While that may be true, your Honor, the election was made-- this document is signed by Mr. Stephens at a time when he had been notified by the Post Office that in fact he had no annuity. He was making a claim on something he really in effect did not have.

THE COURT: I don't see that there is an irrevocable election. It says "If you have more than five years of service you may be entitled to annuity rights which will be forfeit by payment of this refund unless you are later reemployed subject to the Civil Service Retirement Act." They haven't paid the refund.

MR. WILSON: Yes, they have, your Honor.

THE COURT: They have?

MR. WILSON: That has been paid from the Civil Service Commission Trust Fund to the postal service in satisfaction of Mr. Stephens' debt to the postal service.

MR. FELDMAN: That is the essence of the case.

MR. WILSON: Yes, it is.

THE COURT: In other words, your claim is that by applying for this refund he applied for -- in other words, that created an indebtedness from the Civil Service fund-- what do you call it, the Trust Fund?

MR. WILSON: Yes.

THE COURT: -- Trust Fund to Mr. Stephens, which in

effect the government has seized.

MR. WILSON: Garnisheed, yes, your Honor.

THE COURT: Okay. And that has already been done.

MR. WILSON: Yes, your Honor.

THE COURT: All right. And your position is that this did not constitute a waiver or any other thing that would deprive him of the annuity right and you are now claiming the annuity right.

MR. FELDMAN: That's correct, your Honor.

THE COURT: Let me get it though. If he was entitled to a lump sum as of this time, the figures you gave me are correct, namely, it is agreed that the figures would be the $6,838.83, right?

MR. FELDMAN: That's correct.

THE COURT: Both sides agree to that?

MR. WILSON: Plus the interest, yes, your Honor.

MR. FELDMAN: That includes some interest.

THE COURT: It includes interest to the date when it was due, right?

MR. FELDMAN: That includes $232 of interest.

THE COURT: $232.81 in interest, correct?

MR. FELDMAN: That's correct.

THE COURT: Agreed, Mr. Wilson?

MR. WILSON: Yes, your Honor.

THE COURT: All right. Then he had $240 in salary which he has not received, right?

MR. WILSON: Yes, your Honor.

THE COURT: There is an item of unused annual leave credit. What is that amount?

MR. FELDMAN: We are claiming that it is $544.05.

THE COURT: What does the government claim it is?

MR. WILSON: $454.17 in the stipulated facts, your Honor.

THE COURT: It is stipulated that it is at least.

MR. WILSON: Yes, your Honor.

THE COURT: What is the basis for -- that should be a matter of accounting. I can't understand the difference.

MR. WILSON: Your Honor, as far as we were able to determine, this was the number.

THE COURT: What is the basis for your 544?

MR. FELDMAN: Letters that the Post Office sent Mr. Stephens.

THE COURT: Admitting that amount?

MR. FELDMAN: Yes.

THE COURT: Where are the letters?

MR. FELDMAN: Not at my fingertips, your Honor.

THE COURT: Are they in evidence?

MR. FELDMAN: I don't think so, no.

THE COURT: All right. I am going to close it off at that.

MR. FELDMAN: We are also claiming a bonus of $300.

THE COURT: What is the basis for the bonus claim?

MR. FELDMAN: Similarly, letters from the government.

THE COURT: Are they in evidence?

MR. FELDMAN: No, they are not.

THE COURT: Okay. The items that I am going to consider as being items owed, which would be owed to plaintiff but for the counterclaim, are the $6,838.83 retirement and disability lump sum, $240 salary earned and unused annual leave credit of $454.17, which totals $7,533.

Now, the stipulation referred to a claim for lost mail of $8,425.46. However, I have kept a running total of the 11 items now claimed and I get the figure of $7,620. It doesn't make all that much difference if we take the $7,533. What is the total of the 11 items? Does the government have a different total?

MR. WILSON: Your Honor, the difference should be-- your Honor, I hadn't calculated the 11 you are referring to, but the difference between the two should be a claim which we presented no evidence on.

THE COURT: It should be about $800.

MR. WILSON: Which was paid in the amount of $800. That should be the difference between the figure--

THE COURT: You can add them up and correct me, but I think that I am right.

MR. WILSON: Your Honor, we accept your figure. It is quite close.

THE COURT: Yes. You want to present a brief oral argument? You have anything else you want to present, Mr. Feldman?

MR. FELDMAN: No, your Honor.

THE COURT: Does the government? You made an opening statement.

MR. WILSON: I did, your Honor. I had wanted to submit a post-trial brief.

THE COURT: I am going to tell you right now I am finding in favor of the government. I have analyzed the evidence as we went along. I made a chart as we went along. I will find in favor of the government. Let me put my findings very briefly on the record.

This is an action which has been tried by the court without a jury and the following are my findings of fact and conclusions of law:

Although the action originally had certain other

claims, by the time of the trial which has just been held the claims of the parties boil down to the following:

Plaintiff, a former employee of the former Post Office Department and what became the postal service in April 13, 1971, is claiming in this action certain amounts allegedly due him from the government by way of compensation.

Because of a problem involving mail theft, the plaintiff was suspended from his employment in the Post Office Department in March, 1969, and was later finally terminated.

The evidence shows that the government would owe the plaintiff the following sums but for the counterclaim of the government, which I will mention shortly.

The government would owe plaintiff a lump sum amount on retirement and disability of $6,838.83. The government would owe the plaintiff salary of $240. The government would owe the plaintiff unused annual leave amounting to $454.17. The total of these amounts is $7,533.

Certain additional amounts of unused annual leave and an amount of bonus are claimed by plaintiff, but there is no evidence to support such additional claims.

In addition, plaintiff claims to be entitled to an annuity in lieu of the lump sum retirement of $6,838.83. For reasons discussed a few minutes ago with counsel, I reject

the claim that plaintiff is entitled to an annuity.

On November 7, 1971, the plaintiff filed an application for refund of retirement deductions and as a result of that application the Civil Service fund became indebted to the plaintiff for the lump sum. That lump sum has been seized by the postal service in satisfaction of certain amounts allegedly owed by the plaintiff to the postal service. In any event, I find that the indebtedness of the government to plaintiff is in the form of the lump sum payment rather than the annuity.

What plaintiff is seeking in this action is to have paid to him this unpaid indebtedness on the part of the government. At least, that is what is being sought as the issues are now tried, although, as I indicated, certain other issues were raised initially in the action, but have been dispensed with.

The government counterclaims, claiming that an amount greater than the $7,533 was and is owed by the plaintiff to the government under the following circumstances:

The government contends that it was required to honor a substantial amount of claims of persons who had suffered losses of registered mail items and that as a result of those claims the government is entitled to recover against the person responsible for those losses. The government contends

that the plaintiff is responsible for those losses. It is conceded that if the government has sustained its burden of proof of the plaintiff's responsibility that the plaintiff is indeed indebted to the government for the amounts of the claims paid.

I hold that the government has proved sufficiently that the plaintiff was responsible for 11 instances of thefts of registered items, commencing January, 1966, and running through March, 1969, and that the plaintiff is indebted for the total amount paid by the government on such claims, namely, $7,620.

The basis for my holding is as follows:

The evidence demonstrates that on March 15, 1969, pursuant to a special investigation, the plaintiff was observed in the registration cage of the 36th Street postal station in New York City to have reached into registered mail pouches in a suspicious manner. Later two parcels were discovered to have been slit open. However, the contents of these parcels were apparently not taken out of the parcels.

Further observance was made of the plaintiff on March 22, 1969. In advance of this date a test parcel containing certain jewelry had been prepared. As a result of observations and seizure of materials on March 22, 1969,

it was discovered that plaintiff on that date reached into a registered mail pouch,slit open the test parcel, removed the jewelry from it and placed the jewelry inside Bermuda shorts which were underneath plaintiff's outer pants.

It appears that the plaintiff's razor type knife was found in the registry cage where he was observed to have placed it after usage.

It appears that this led to a renewed investigation of certain losses of registered mail items which had occurred over some period of time prior to the March, 1969, incident.

Incidentally, the plaintiff was arrested on March 22, 1969, and was subsequently convicted in this court after trial of mail embezzlement. He served a prison sentence for that crime. The conviction was sustained on appeal. The criminal case related solely to the test parcel. The present case relates not to the test parcel, but to a number of registered mail losses occurring prior to the incident involving the test parcel.

There is no direct evidence by way of observation or otherwise of plaintiff's connectionwith the losses which I am referring to. The evidence is entirely circumstantial. However,in my view it is sufficient to show at least by a preponderance of the evidence that plaintiff has responsiblity for the losses that I am referring to. I am

referring to 11 specific losses occurring from January, 1966, through early March, 1969. Each of these losses involved jewelry. In each case I find that the circumstantial evidence taken together, taken as a whole, shows that the losses occurred in the registry section of the 36th Street Post Office at times when plaintiff was employed in that registry section. I further find that the circumstantial evidence taken as a whole demonstrates that plaintiff was responsible for these losses and stole the jewelry which was found to be missing.

The dates of the losses are as follows: January 26, 1966; June 6, 1967; December 2, 1967; June 25, 1968; September 25, 1968; November 27, 1968; a date which is approximately December 7th or 9th, 1968; another item or a second item involving the dates December 7th or 9th, 1968; a date which is about January 18, 1969; a date which is about February 15th or 17th, 1969; and March 11, 1969.

No other employee at the 36th Street Station or particularly in the registry cage of that station has been shown to have any involvement with any of these losses and there is no reason to believe that any such other employee was involved in mail thefts at that location during this period. No other employee was observed to be conducting the type of activity which plaintiff was found to be

conducting on March 22, 1969. After plaintiff's arrest on March 22, 1969, and his removal from that employment, this type of loss ceased.

The government is entitled to judgment on its counterclaim in the amount of $7,620 plus costs. It is entitled to judgment against plaintiff in that amount.

Since this judgment on the counterclaim more than covers what plaintiff is entitled to or would be entitled to on his claim, namely, $7,533, the plaintiff is entitled to no recovery in this action.

Let me ask you, as far as the government, the exact form of the judgment, I take it that the government considers that it has now recovered the $7,533, right?

MR. WILSON: That's right, your Honor.

THE COURT: All right. So the net judgment, if we want to be accurate, would be a judgment for the difference between the $7,620 owed by the plaintiff to the government and the $7,533 already used to be applied or credited against that amount, and that difference is $87.

MR. WILSON: Right.

THE COURT: So the government is entitled to judgment dismissing the claim here of the plaintiff and is entitled to a net judgment here of $87 plus costs of the action.

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